APPENDIX

IN THE

Supreme Court of the United States

OCTOBER TERM, 1976

No. 76-545

UNITED AIR LINES, INC.,

Petitioner,

vs.

LIANE BUIX McDONALD,

Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

PETITION FOR CERTIORARI FILED OCTOBER 19, 1976
CERTIORARI GRANTED DECEMBER 6, 1976

IN THE

Supreme Court of the United States

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ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

INDEX.

5– 8–72 Enter order, plaintiff's motion for leave to amend complaints in both cases 68 C 2311 and 70 C 1157 is hereby entered and continued to May 16, 1972 at 9:30 a.m.—Perry, J.

Mailed notices 5-10-72.

5– 8–72 Filed amendment to complaints.

5– 8–72 Filed plaintiff's motion to consolidate causes.

5–16–72 Leave is granted to plaintiff to file amended complaint. It is further ordered that both sides are to submit to the court simultaneously memorandum and proposed orders re enlargement of Sprogis case 68 C 2311, and consolidation of Sprogis case and Romasanta case on or before June 1, 1972 and cause is taken under advisement.—Perry, J.

Mailed notices 5-16-72.

5–22–72 Filed plaintiff's amendment to complaint.

6–14–72 Enter memorandum order re; denying class action in Sprogis v. United Airline case No. 68 C 2311 and denying motion to consolidate Sprogis case No. 68 C 2311, and Romasanta et al case No. 70 C 1157.(Draft)—Perry, J.

Mailed notices 6-15-72. c

6–26–72 Filed defendant's motion.

6–26–72 Enter order, defendant's motion to strike class action allegations of complaint, proceed as individual action, is entered and continued for hearing on July 28, 1972 at 2 p.m.—Perry, J.

Mailed notices 6-27-72.

6–26–72 Enter order, defendant's motion for leave withdraw first four affirmative defenses, deter all discovery until determination whether action shall proceed as class action is hereby granted. Perry, J.

Mailed notices 6-27-72.

7–28–72 Hearing on motion to strike class allegation of complaint and to proceed as individual action is held. Order said motion taken under advisement and cause is continued to September 11, 1972 at 1:30 p.m. for report on status.—Perry, J.

Mailed notices 8-1-72. ij

9–11–72 Filed Plaintiffs status report. ij

11–10–72 Filed Applicants for intervention's notice of motion; Motion to intervene as plaintiffs.

11–10–72 Enter order leave to file motion to intervene as plaintiffs, is hereby granted and leave is granted to defendant to file its response thereto.—Perry, J.

11–10–72 Filed Response of defendant to motion to intervene as plaintiffs.

11–10–72 Filed Plaintiffs objections to defendant's proposed order striking class action allegations.

11–10–72 Filed Affidavit of Daniel E. Kain.

11–10–72 Filed Affidavit of C. P. Hutchens. ij

11–10–72 Enter order Defendant's motion for leave to file affidavits of Daniel E. Kain and C. P. Hutchens is hereby granted. It is further ordered that leave is given to plaintiff to file its objections to Defendants Proposed order striking Class Action allegations.—Perry, J.

Mailed notices 11-14-72.

11–20–72 Filed Plaintiff-intervenors' reply to defendant's objections to motion to intervene as plaintiffs.

11–20–72 Filed Defendant's reply to plaintiffs' objections to the proposed order striking class action allegations.

12– 6–72 It is ordered that all allegations of the complaint relating to class action be stricken and that this

action not proceed as a class action. It is further ordered that the motion to intervene herein be granted as to Sandra Moore Ballinger, Sarah A. Boling, Carol Elaine Brackle, Catherine Reese Colvin, Susan Fusco, Judith Hopkins Pendleton, Terry Baker Van Horn, Mary O'Connor Whitmore, Marlene Riehl Carney, Rita Gardino Trubshaw, Lynn Mason Raymond and Joanne Fitzgerald Hamersley. Said motion to intervene is denied as to Elizabeth Glenn Ashworth, Bernadette Dixon, Barbara A. Klocek, Gloria Lala, Patricia M. Moon, Janice Schmidt Rensch, Jeanette Byers Schlau, Mary Weis, Helen Read Gunst, Diane M. Welty, Evelyn A. Ambrose and Doris Rivas Collins. (Draft)—Perry, J.

Mailed notices 12-7-72. ij

12–20–72 Filed Defendant's answer to intervenors' complaint.

12–20–72 Filed Defendant's notice to take deposition upon oral examination. ij

1 –2–73 Filed certified copy of order of USCA petition for permission to appeal is hereby denied. P

3–21–73 Filed deposition of Joanne Fitzgerald.

3–21–73 Filed deposition of Susan Wyman Fusco.

3–21–73 Filed deposition of Terry Baker Van Horn. ij

4–16–73 Filed deposition of Sarah Ann Boling. ij

4–25–73 Filed motion to intervene as plaintiff.

4–25–73 Filed Intervenor's complaint and copy.

4–25–73 Motion of Carol Paglia Barounes to intervene as plaintiff is granted and said plaintiff-intervenor is given leave to file her intervenors complaint. De-

fendant is given 20 days to answer or otherwise plead to said intervenor's complaint.—Perry, J.

Mailed notices 4-27-73. ij

5–16–73 Filed deposition of Marlene June Carney.

5–16–73 Filed deposition of Carole Elaine Brackle. ij

5–17–73 Filed Defendant's answer to complaint of intervenor Carol Barounes. ij

5–30–73 Filed deposition of Judith Hopkins Pendleton.

5–30–73 Filed depositions of Rita Ann King and Mary Whitmore. 2 volumes in one envelope. ij

7–10–73 Filed deposition of Lynn Mason Raymond. ij

11–21–73 Filed deposition of Brenda Altman and Sandra Berry Hoiles. ij

1–31–74 Filed Plaintiff's motion for summary judgment.

3 –6–74 Filed Memorandum of defendant is opposition to motion for partial summary judgment. ij

6–14–74 Enter Order dated June 13, 1974: This cause comes on upon the motion of plaintiff Rita Ann King to enter partial summary judgment in her favor by ordering that she be reinstated to her former position as a Stewardess in the employ of defendant with all rights of seniority and longevity restored. The Court has read and considered said motion and the memoranda of the respective parties and is of the opinion that said motion should be granted. Accordingly, It Is Ordered that said plaintiff Rita Ann King submit to the court within ten (10) days a proposed Judgment Order in consonance with the aforesaid opinion of the court. Similar motions for partial summary judgment filed by plaintiffs Sandra Beery Hoiles, Carole Elaine Brackle, Sarah Ann Boling and Lynn Mason Raymond are under consideration and will be the subject of a separate rul-

ing or rulings. It Is Further Ordered that this cause be and it is hereby called for June 21, 1974 at 10:00 a.m. for a trial date setting. Perry, J.

Mailed notices 6-14-74. sr

6–14–74 Enter order dated June 14, 1974: This cause comes on upon the motion of plaintiffs Sandra Beery Hoiles, Carole Elaine Brackle, Sarah Ann Boling and Lynn Mason Raymond to enter partial summary judgment in their favor by ordering that they be reinstated to their former positions as stewardesses in the employ of defendant with all rights of seniority and longevity restored. The court has read and considered said motion and the memoranda of the respective parties in support thereof and in opposition thereto and is of the opinion that said motion of the aforesaid plaintiffs should be taken under advisement with the case. Accordingly, it is ordered that said motion of the aforesaid plaintiffs be and it is hereby taken under advisement with the case. It is further ordered that this cause be and it is hereby called for June 21, 1974 at 10:00 a.m. for the setting of a trial date.—Perry, J.

Notices mailed 6-17-74. bb

6–28–74 Enter order dated June 27, 1974. Enter order granting plaintiff Rita Ann King's motion for partial summary judgment. Draft—Perry, J.

Mailed notices 6-28-74. T

6–27–74 Filed plaintiffs' motion for summary judgment.

6–28–74 Enter order dated June 27, 1974. Leave granted to certain plaintiffs to file their motion for summary judgment and defendant is given 5 days to file its response thereto.—Perry, J.

Mailed notices 6-28-74. T

7– 3–74 Enter order dated July 2, 1974. Enter decree granting motion of certain plaintiffs for summary judgment. Draft—Perry, J.

9– 5–74 Enter order dated September 4, 1974: order date of September 11, 1974 heretofore set, stricken and cause is continued to September 20, 1974—at 10 a.m. for trial date setting.—Perry, J.

Mailed notices 9-5-74. G

9–23–74 Enter order dated September 20, 1974: order cause continued to October 21, 1974 at 10 a.m. for trial date setting—Perry, J.

Notices mailed 9-23-74. T

10–22–74 Enter order dated October 21, 1974: Order cause continued to November 15, 1974 at 10:00 a.m. for trial date setting—Perry, J.

Mailed notices 10-22-74. T

11–18–74 Enter order dated November 15, 1974. Order cause continued to December 16, 1974 at 10 a.m. for trial date setting—Perry, J.

Mailed notices 11-18-74. T

12–17–74 Enter order dated December 16, 1974: order cause continued to January 14, 1975 at 10 a.m. for report on status.—Perry, J.

Mailed notices 12-17-74. T

1–16–75 Enter order dated January 14, 1975. Order cause continued to January 30, 1975 at 10 a.m. for further report on status.—Perry, J.

Mailed notices 1-16-75. T

1–31–75 Enter order dated January 30, 1975; order cause continued to February 27, 1975 at 10 a.m. for further report on status.—Perry, J.

Mailed notices 1-31-75. ij

2–28–75 Enter order dated February 27, 1975. Order cause continued to March 3, 1975 at 10 a.m. for further report on status.—Perry, J.

Mailed notices 2-28-75. T

3– 4–75 Enter order dated March 3, 1975. Order cause continued to April 1, 1975 at 10 a.m. for trial date setting.—Perry, J.

Mailed notices 3-4-75. T

4– 2–75 Enter order dated April 1, 1975: Order cause continued to May 6, 1975 at 10:00 a.m. for a report on status.—Perry, J.

Notices mailed 4-2-75. msn

5– 7–75 Enter order dated May 6, 1975: Order cause continued to June 10, 1975 at 10 a.m. for trial date setting.--Perry, J.

Mailed notices 5-7-75. G

6–11–75 Enter order dated June 10, 1975: Order cause continued to July 3, 1975 at 10 a.m. for report on status and trial date setting.—Perry, J. msn

7– 3–75 Filed motion of defendant for partial summary judgment against co-plaintiff Carole Anderson Romasanta.

7– 3–75 Filed motion of defendant to dismiss complaint as to co-plaintiff Lynn Mason Raymond.

8– 6–75 Enter order dated August 5, 1975: This cause comes on upon defendant's motion for partial summary judgment against plaintiff Carole Anderson Romasanta and defendant's motion to dimiss complaint as to plaintiff Lynn Mason Raymond. The court has read and considered said motion for partial summary judgment and the memoranda of the respective parties in support thereof and in

opposition thereto and finds that said motion is not well taken and should be denied. The court has also read and considered said motion to dismiss and the memoranda of the respective parties in support thereof and in opposition thereto and finds that said motion is well taken and should be granted. Accordingly, it is ordered that said defendant's motion for partial summary judgment against plaintiff Carole Anderson Romasanta be and it is hereby denied, and that said defendant's motion to dismiss the complaint as to plaintiff Lynn Mason Raymond be and it is hereby granted and the complaint as to her is hereby dismissed. Case called for setting at 10 a.m. 8-28-75—Perry, SJ.

Notices mailed 8-6-75. msn

8–29–75 Enter order dated 8–28–75: Order cause continued to Sept. 11, 1975 at 10 a.m. for report on status and trial date setting.—Perry, SJ.

Notices mailed 8-29-75. msn

9–12–75 Enter order dated 9-11-75: Order cause continued to Sept. 26, 1975 at 10 a.m. for further report on status.—Perry, SJ.

Notices mailed 9-12-75. msn

10– 3–75 Filed plaintiff's Notice of Motion; Motion of Plaintiff Catherine Colvin for Leave to Withdraw from this Action.

10– 6–75 Enter order dated 10-3-75: Motion of plaintiff Colvin to Withdraw granted.—Perry, SJ.

10– 6–75 Enter order dated 10–3–75: It is hereby ordered that this cause be and the same is hereby dismissed (draft).—Perry, SJ.

Notices mailed 10-6-75. msn

10–21–75 Filed Petition to Intervene for Purposes of Taking an Appeal.

10–22–75 Enter order dated 10-21-75: Petition of Liane Buix McDonald to Intervene for purposes of taking an appeal is hereby denied. Enter Order.—Perry, SJ. Notices mailed 10-22-75. msn

10–23–75 Filed Petitioner Liane Buix McDonald's Notice of Appeal from the final order and judgment of October 3, 1975.

10–23–75 Filed Petitioner Liane Buix McDonald's Notice of Appeal from the final order entered October 21, 1975.

10–24–75 Mailed copies of Notice of Appeal to Clerk USCA, plaintiff's attorney, Court Reporter and defense counsel, Mayer Brown and Plat and David J. Shipman. msn

10–28–75 Filed request to transmit complete record on appeal, including transcript of proceeding held on July 28, 1972, September 11, 1972 and October 21, 1975. msn

11–21–75 Filed certified copy USCA: The record on appeal will be filed the Clerk on or before December 2, 1975.

Court of Appeals 72-8117

12–15–72 Filed orig. and 3 copies Petition for Permission to Appeal. svc

12–26–72 Filed orig. and 3 copies Response to Petition for Permission to Appeal. svc

12–27–72 Order Judges Swygert, Pell and Sprecher *denying* petition for leave to appeal.

UNITED STATES DISTRICT COURT
Eastern Division
Northern District of Illinois

CAROLE ANDERSON ROMASANTA,
Plaintiff,

vs.

UNITED AIR LINES, INC. a corporation,
Defendant.

Civil Action
No. 70 C 1157.

COMPLAINT

The Plaintiff, by and through her attorneys, Richard F. Watt, Irving M. King, and Sheli Z. Rosenberg, complains of the Defendant and states as follows:

1. This action arises under Title VII of the Civil Rights Act of 1964, 42 U. S. C. Section 2000e *et seq.* Jurisdiction of this Court is invoked pursuant to such Act, particularly Title VII, Section 706(f) 42 U. S. C. Sec. 2000f.

2. Plaintiff is a person of the female sex who was employed by the Defendant as a flight cabin attendant, or airline stewardess, until she was discharged from such position by the Defendant on or about May 9, 1967.

3. Plaintiff brings this as a class suit on behalf of herself and all other United Air Line Stewardesses who have been discharged on account of marriage pursuant to the policy of United Air Lines described in this Complaint. There are approximately twenty-seven or twenty-eight other such discharged stewardesses, and joinder of all of them would be impractical. There are questions of law and of fact common to all members of the class, namely, all of the stewardesses discharged by United Air Lines because of marriage; Plaintiff, as a member of the class, can fairly and properly represent and protect the interests of all members of the class. The prosecution of individual suits by individual members of the class would create a risk of inconsistent adjudications.

4. Defendant, United Air Lines, Inc., is a corporation organized and existing by virtue of the laws of the State of Delaware. Its principal office is located in Elk Grove Village, Cook County, State of Illinois, which is within the Northern District of Illinois.

5. Title VII of the Civil Rights Act of 1964 makes it an unlawful employment practice for an employer, among other practices, to fail or refuse to hire any individual or otherwise discriminate against any individual with respect to compensation, terms, conditions or privileges of employment because of sex except where sex is a bona fide occupational qualification reasonably necessary to the normal operation of that particular business or enterprise.

6. At all relevant times the Defendant maintained in effect a rule, regulation or policy, pertaining solely to females employed as stewardesses, requiring that stewardesses be unmarried when first employed and that they thereafter remain unmarried while so employed. The policy of Defendant, as in effect at the time of Plaintiff's discharge, calls for the discharge of any stewardess who married.

7. Defendant hires both male and female employees. There is no rule, regulation or policy of the nature described in Paragraph 6 above which is or has been maintained or enforced against male employees of the Defendant. Pursuant to the above rule or regulation Defendant has dismissed from their positions females employed as stewardesses immediately upon notification of the marriage of such employee, but no action is or has been taken against male employees upon marriage, and male employees are permitted to continue employment without regard to marital status. On or about May 9, 1967, the Defendant discharged the Plaintiff as a stewardess pursuant to the above-described policy or rule and in violation of Title VII of the Civil Rights Act of 1964, for the sole reason that she is a female and became married while in the employ of Defendant in the capacity of stewardess. Other members of the class were discharged pursuant to such policy in the period 1965-1968.

8. Defendant has committed and is now intentionally committing unlawful employment practices with respect to the Plaintiff and others in the class by discriminating against them because of their sex in summarily and arbitrarily discharging them as stewardesses because of their marriages.

9. The practices and actions of the Defendant described in Paragraphs 6, 7, and 8 above constitute unlawful employment practices in violation of Title VII, Section 2000e *et seq.* of the Civil Rights Act of 1964. As a result thereof, the Plaintiff and other members of the class have been subjected to discrimination because of their sex with respect to conditions and privileges of employment, all in violation of said statute. Plaintiff and other members of the class have been and are continuing to be wrongfully deprived of employment and substantial compensation as a direct and proximate result of the unlawful employment practices hereinabove described.

10. Plaintiff has exhausted all procedures set forth in Title VII as a prerequisite to the filing of this action. More particularly, Plaintiff filed timely charges on or about July 25, 1967, with the Equal Employment Opportunity Commission against the Defendant in accordance with the provisions of Title VII; the Commission issued its decision finding reasonable cause to believe the Defendant had committed unlawful employment practices in violation of Title VII by discrimination against her because of her sex on or about January 19, 1970, and the Commission advised Plaintiff on or about April 17, 1970, that it has failed to resolve the Defendant's unfair employment practices by conciliation.

11. Plaintiff has no other remedy at law but to bring this action.

WHEREFORE, Plaintiff prays that this Court issue an injunction restraining Defendant from discriminating against the Plaintiff and other members of the class, because of their sex in violation of Title VII of the Civil Rights Act of 1964; that the Court order the Defendant to reinstate all members of the

class in their positions as stewardesses; that the Court order the Defendant to make payment to each individual member of the class equal to all loss of compensation from the time of her illegal discharge to the date of reinstatement; that the Court order Defendant to restore to each member of the class any and all employment privileges and opportunities, including all rights of seniority or longevity of employment, which would have accrued to her had her employment not been interrupted by the unlawful discharge; that the Court order, adjudge and declare that the rule, regulation or policy of the Defendant under which Defendant discharges females from their employment as stewardesses is unlawful and unenforceable and restrain and enjoin its enforcement in the future; and that the Court order and decree such other and further relief as may be deemed just.

RICHARD F. WATT
IRVING M. KING
SHELI Z. ROSENBERG
Attorneys for Plaintiff

UNITED STATES DISTRICT COURT.

* * (Title Omitted in Printing) * *

ANSWER.

Now comes defendant United Air Lines, Inc., by its attorneys, and for its Answer to the Complaint states and alleges as follows:

1. Defendant admits the allegations of paragraph 1 that the action arises, and this Court has jurisdiction, under Title VII of the Civil Rights Act of 1964, but denies any implication that defendant has violated that Act.

2. Defendant admits the allegations of paragraph 2 that plaintiff is a female who was employed by defendant as a stewardess until discharged on or about May 9, 1967.

3. Defendant admits that plaintiff purports to bring this action as a class suit on behalf of herself and all other of defendant's stewardesses who allegedly were discharged on account of marriage pursuant to the policy of defendant alleged in the Complaint but denies that this is an appropriate action to be brought as a class suit. Defendant admits that approximately twenty-seven or twenty-eight stewardesses were discharged on account of marriage but states that of this number seventeen have been reinstated, two accepted an offer of reinstatement but did not return to work, one accepted an offer of reinstatement but did not want to return to flying and one resigned at the time she was offered reinstatement. Defendant denies that joinder of all such discharged stewardesses would be impractical, that common issues of fact and law are predominant, that plaintiff can fairly and properly represent the interests of all members of the alleged class and that prosecution of individual suits by individual members of the alleged class would create a risk of inconsistent adjudication.

4. Defendant admits the allegations of paragraph 3 that it is a Delaware corporation and that its principal office is in Elk

Grove Village, Cook County, Illinois, which is within the Northern District of Illinois.

5. Paragraph 5 paraphrases provisions of Title VII of the Civil Rights Act of 1964 and requires no answer.

6. Defendant admits the allegations of paragraph 6 that it maintained a rule, regulation or policy, pertaining solely to females employed as stewardesses requiring that they be unmarried when first employed and that they remain unmarried thereafter while so employed; that this policy, as in effect at the time of plaintiff's discharge, called for the discharge of any stewardess who married. Defendant denies any allegation that such policy is presently in effect.

7. Defendant admits the allegations of paragraph 7 that it hires both male and female employees; that there is no rule, regulation or policy as described in paragraph 6 of the Complaint which has been maintained or enforced against male employees; that pursuant to such policy defendant has dismissed stewardesses immediately upon notification of marriage and that no such action has been taken against male employees upon marriage, and male employees are permitted to continue employment without regard to marital status; and that on or about May 9, 1967 defendant discharged plaintiff as a stewardess pursuant to such policy. Defendant denies the allegation of paragraph 7 that the discharge of plaintiff was in violation of Title VII of the Civil Rights Act of 1964. Defendant admits that other stewardesses were discharged pursuant to such policy in the period 1965-1968, but denies any implication that these discharges were in violation of Title VII of the Civil Rights Act of 1964 or that this action can properly be maintained as a class action.

Further answering said paragraph, defendant states that such policy has never been in effect with respect to female employees other than stewardesses, and that such policy is not currently in effect with respect to stewardesses.

8. Defendant denies the allegations of paragraph 8 that it has committed and is now intentionally committing unlawful employment practices with respect to plaintiff or any other stewardess employed by defendan. and denies any implication that this action can properly be maintained as a class action.

9. Defendant denies the allegations of paragraph 9 that the practices and actions of defendant described in paragraphs 6, 7 and 8 of the Complaint constitute unlawful employment practices in violation of Title VII of the Civil Rights Act of 1964; that as a result plaintiff, or any other stewardess employed by defendant, has been subject to discrimination in violation of the Act; and that plaintiff, or any other stewardess employed by defendant, has been and is continuing to be wrongfully deprived of employment and substantial compensation as a direct and proximate result of the alleged unlawful employment practices of defendant.

10. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 10 that plaintiff has exhausted all procedures set forth in Title VII of the Civil Rights Act of 1964; that plaintiff filed timely charges with the Equal Employment Opportunity Commission; that the Commission issued its decision finding reasonable cause to believe defendant had violated Title VII; and that the Commission has advised plaintiff that it has failed to resolve the alleged unfair employment practices by conciliation.

11. The allegation of paragraph 11 that plaintiff has no other remedy at law but to bring this action is conclusory and requires no answer.

First Affirmative Defense

1. Defendant's action in continuing the long-standing policy of requiring the termination of stewardesses' employment upon marriage and its further action in applying said policy to plaintiff was taken in good faith, in conformity with, and in reliance on a written interpretation or opinion of the Equal Employ-

ment Opportunity Commission, and that by reason of said good faith reliance defendant is relieved of any and all liability or punishment for the alleged unlawful employment practice herein complained of, by reason of Section 713(b) of the Civil Rights Act of 1964 (78 Stat. 265, 42 U. S. C. § 2000e-12).

Second Affirmative Defense

1. Defendant's long-standing policy of requiring the termination of stewardesses' employment upon marriage was not unlawful and in violation of Section 703(a) of the Civil Rights Act of 1964 (78 Stat. 265, 42 U. S. C. § 2000e-2).

Third Affirmative Defense

1. In the alternative, even if defendant's long-standing policy of requiring the termination of stewardesses' employment upon marriage would otherwise be in violation of Section 703(a) of the Civil Rights Act of 1964 (78 Stat. 265, 42 U. S. C. § 2000e-2), such policy is not an unlawful employment practice by reason of Section 703(e) of the Civil Rights Act of 1964 (78 Stat. 265, 42 U. S. C. § 2000e-2) because sex or marital status, or both, are bona fide occupational qualifications reasonably necessary to the normal operation of the position of a stewardess.

Fourth Affirmative Defense

1. In the alternative, even if defendant's long-standing policy of requiring the termination of stewardesses' employment upon marriage is in violation of Section 703(a) of the Civil Practice Act of 1964 (78 Stat. 265, 42 U. S. C. § 2000e-2), plaintiff is not entitled to any relief by reason of Section 706(g) of the Civil Rights Act of 1964 (78 Stat. 265, 42 U. S. C. § 2000e-5) because defendant has not intentionally engaged in and is not now intentionally engaging in such unlawful employment practice.

Fifth Affirmative Defense

1. On or about November 7, 1968, defendant concluded a Letter of Agreement with the Air Line Pilots Association, the bargaining representative for the stewardesses, by which it agreed that marriage would no longer disqualify a stewardess from continuing in its employ and that all stewardesses who had been terminated because of marriage and had filed a valid grievance under the collective bargaining agreement or a valid complaint before the Equal Employment Opportunity Commission or any state agency would be offered reinstatement. It was agreed that acceptance by a stewardess of reinstatement would be in full satisfaction of any grievance or complaint filed by such stewardess. A copy of the Letter of Agreement is attached hereto as Exhibit A and made a part hereof.

2. Pursuant to that Agreement, defendant sent a letter dated November 14, 1968 to plaintiff offering her reemployment. A copy of such letter is attached hereto as Exhibit B and made a part hereof.

3. Plaintiff accepted the offer contained in defendant's letter dated November 14, 1968 and withdrew her charge before the Equal Employment Opportunity Commission. Copies of plaintiff's letter accepting defendant's offer of reinstatement and plaintiff's letter, dated November 28, 1968, to the Equal Employment Opportunity Commission are attached hereto as Exhibits C and D and made a part hereof.

4. Plaintiff agreed to reinstatement as a stewardess in lieu of any and all other relief for the alleged unlawful employment practice of defendant and is, therefore, barred from maintaining this action.

WHEREFORE, defendant prays that the Complaint be dismissed and it be awarded its costs.

UNITED AIR LINES, INC.
By STUART BERNSTEIN
ARTHUR J. KOWITT
JAMES W. GLADDEN, JR.
Its Attorneys

EXHIBIT A

Letter of Agreement
between
United Air Lines, Inc.
and
The Stewardesses and Flight Stewards
in the service of
United Air Lines, Inc.
as represented by
The Air Line Pilots Association,
International

This Letter of Agreement is made and entered into in accordance with the provisions of Title II of the Railway Labor Act, as amended, by and between United Air Lines, Inc. (hereinafter referred to as the "Company") and the Stewardesses and Flight Stewards in the service of United Air Lines, Inc., as represented by the Air Line Pilots Association, International (hereinafter referred to as the "Association").

Witnesseth:

The Company agrees that marriage will not disqualify a Stewardess from continuing in the employ of the Company as a Stewardess, but any Stewardess who shall hereafter become pregnant shall have her services with the Company permanently severed as a Stewardess and she shall at that time forfeit her seniority and any recourse to Section XII, Investigation and Discipline, of the Agreement between the parties dated September 27, 1967.

All Stewardesses who have been terminated by the Company because of marriage and have filed a valid grievance protesting such policy, or who have as of this date filed a valid complaint before the Equal Employment Opportunity Commission or

State Agencies, will be offered the opportunity to return to active Stewardess service. Such Stewardess shall make application for reinstatement with no loss of seniority to the Director of Stewardess Service within thirty (30) days of receipt of such notification from the Company of such offer.

Acceptance of reinstatement will be in full satisfaction of any grievance or complaint filed by such Stewardesses. The Association will encourage such Stewardesses to accept reinstatement as provided above.

This Agreement shall become effective as of the date of the signing hereof and shall continue in full force and effect concurrently with the Agreement dated September 27, 1967 between United Air Lines, Inc. and the Stewardesses in the service of United Air Lines, Inc. as represented by the Air Line Pilots Association, International.

In Witness Whereof, the parties hereto have signed this Letter of Agreement this 7th day of November, 1968.

Witness:
/s/ PERRY A. WOOD
/s/ JACK D. KANASH
/s /O. E. WILKINSON
/s/ ROBERT WERTHEIMER

For United Air Lines, Inc.
/s/ CHARLES M. MASON
Charles M. Mason
Senior Vice President—Personnel

Witness:
/s/ BEATRICE L. KAUFFMAN
/s/ V. DIANE ROBERTSON
/s/ MARTY BROWN
/s/ BETTY JO STEWART
/s/ JOHN G. LOOMOS

For the stewardesses and stewards in the Service of United Air Lines, Inc.
/s/ CHARLES H. RUBY,
Charles H. Ruby,
President—Air Line Pilots Association, International
/s/ MARGIE COOPER
Margie Cooper
Vice President—Steward and Stewardess Division

UNITED STATES DISTRICT COURT

* * (Title Omitted in Printing) * *

NOTICE OF MOTION

To: Mr. Stuart Bernstein
Mr. Arthur Kowitt
Mayer, Brown & Platt
231 South LaSalle Street—Suite 1955
Chicago, Illinois
Attorneys for Defendant

Please take notice that on October 4, 1971, at the time and place set by the Honorable J. Sam Perry for a status report in this cause, we shall ask the Court to set this cause on an early date for a pre-trial conference, or such other type of hearing as the Court may direct, for the purpose of determining or defining the scope of the class of plaintiffs represented in this action.

/s/ IRVING M. KING
Attorneys for Plaintiff.

I certify a copy of this notice was mailed to the above addressees this 28th day of September, 1971.

/s/ IRVING M. KING
Attorney for Plaintiff

UNITED STATES DISTRICT COURT
Northern District of Illinois
Eastern Division

MARY BURKE SPROGIS,
Plaintiff,

vs.

UNITED AIR LINES, INC.,
a corporation,
Defendant.

Civil Action
No. 68 C 2311

CAROLE ANDERSON ROMASANTA and BRENDA BAILES ALTMAN, on behalf of themselves and all others similarly situated,
Plaintiffs,

vs.

UNITED AIR LINES, INC.,
a corporation,
Defendant.

Civil Action
No. 70 C 1157

MOTION OF PLAINTIFFS
TO CONSOLIDATE CAUSES

The plaintiffs in each of the above cases, by their attorneys, move the Court, pursuant to Rule 42(a) of the Federal Rules of Civil Procedure, to consolidate the above two actions for the purpose of further proceedings. In support of this motion the plaintiffs state the following:

1. Each of the plaintiffs in the above cases is a former stewardess discharged by defendant United Air Lines, Inc. because of marriage.

2. Each complaint contends that the defendant's rule prohibiting marriage of stewardesses and the discharge of women

as stewardesses upon their marriage violated Title VII of the Civil Rights Act of 1964, 42 U. S. C. 2000e, *et seq.*, and in the *Sprogis* case the Court has so found. The Court of Appeals has affirmed this Court's finding.

3. All of the plaintiffs in both of the above cases are represented by the same attorneys in this Court.

4. The sole defendant in both of the cases is United Air Lines, Inc. and it is represented by the same attorneys in each case.

5. The complaints in the two cases allege, and the defendant's answer in each admits, that the defendant maintained a firm rule or policy against marriage which it enforced against women employed as stewardesses throughout the defendant's system. Under this rule, no stewardess who became married was permitted to continue in the defendant's employ in the stewardess capacity. The Court has found that this rule was one of general application and that its implementation constituted a violation of Title VII.

6. The employment as a stewardess of each of the named plaintiffs and all those that they represent in the above cases was terminated as a direct result of the maintenance and enforcement of the defendant's unlawful rule, and there are, therefore, common questions of law and fact involved in these actions.

7. In the *Sprogis* case, the Court has granted judgment for the plaintiff and now has before it the issue of whether similar relief should be granted to other stewardesses similarly situated. The *Romasanta* case, since it does involve similar issues of law and fact, has been placed on a passed case or dormant calendar, pending the defendant's unsuccessful appeal of the decision in the *Sprogis* case. The complaint in the *Romasanta* case is filed as a class action and it therefore, like the *Sprogis* case now does, involves not only the common question of the validity of the defendant's rule but the shared issue of whether relief should

be granted to the stewardess-victims of the defendant's unlawful rule as a class.

8. Consolidation of these causes would tend to avoid unnecessary costs and delays and would permit the Court to dispose most expeditiously of all issues between United Air Lines, Inc., and the group of stewardesses whose employment in such capacity it terminated as a result of its unlawful policy.

9. The plaintiffs believe that no prejudice to any party could result from an order consolidating the causes at this time.

RICHARD F. WATT
IRVING KING
Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT
Northern District of Illinois
Eastern Division

MARY BURKE SPROGIS,
Plaintiff,
vs.
UNITED AIR LINES, INC.,
a corporation,
Defendant.

Civil Action
No. 68 C 2311

CAROLE ANDERSON ROMASANTA and BRENDA BAILES ALTMAN, on behalf of themselves and all others similarly situated,
Plaintiffs,
vs.
UNITED AIR LINES, INC.,
a corporation,
Defendant.

Civil Action
No. 70 C 1157

MEMORANDUM AND ORDER

The court has before it the issue of whether class relief is appropriate in the case of *Mary Burke Sprogis* v. *United Air Lines, Inc.* and a motion to consolidate the *Sprogis* case with that of *Carole Anderson Romasanta, et al.* v. *United Air Lines, Inc.*

In its original decree in *Sprogis*, this court found that the enforcement of the no-marriage policy of United Air Lines ("United") discriminated against plaintiff Mary Burke Sprogis because of her sex in violation of Section 703(a)(1) of Title VII of the Civil Rights Act of 1964. The court enjoined United from discriminating against plaintiff, ordered the air line to restore her to her employment and retained jurisdiction of the cause to determine plaintiff's loss of earnings. Plaintiff was directed to submit suggestions as to whether the scope of the relief should be extended to other stewardesses discharged by defendant's enforcement of its no-marriage rule. At this point further proceedings were stayed while an interlocutory appeal was taken.

The United States Court of Appeals affirmed in Sprogis and the cause was returned for further proceedings on "determination of the propriety of class relief." In its majority opinion the Court of Appeals said the district court had jurisdiction to provide relief to individuals similarly situated where "justice requires such action" and that "in our opinion, Rule 23 to the contrary notwithstanding, the district court possesses such power in Title VII cases." However, the majority in affirming this court's power to extend relief expressed no opinion on the ultimate decision to be reached on remand and said:

> ". . . Whether such relief is appropriate in this case must first be determined by the court below after consideration of the arguments advanced by the parties, including references to the safeguards of Rule 23. We merely hold today that the court may so proceed."

The court has considered the memoranda of the parties and the argument of counsel on the propriety of class relief and, if

extended, the scope of the class entitled to relief, together with the motion to consolidate. It has considered whether justice requires the conversion of the *Sprogis* case into a class action in light of the important safeguards of Rule 23. *Sprogis* was initiated by a single plaintiff. It involves back pay. Others now seek to benefit only after judgment.

Rule 23(c)(1) provides:

> "As soon as practicable after the commencement of an action brought as a class action, the court shall determine by order whether it is to be so maintained. An order under this subdivision may be conditional, and may be altered or amended before the decision on the merits."

As Circuit Judge Stevens put it in his dissenting opinion,

> "At a minimum, this rule requires the class to be defined before the merits of the case have been decided. This requirement is, of course, of special importance in litigation involving claims for damages or back pay. A procedure which permits a claim to be treated as a class action if plaintiff wins, but merely as an individual claim if plaintiff loses, is strikingly unfair."

Mrs. Sprogis filed her complaint in this court in November of 1968. The court granted her motion for summary judgment in November 1969 and entered its findings, conclusions and decree in January 1970. It asked plaintiff to submit, in the form of suggestions to the court, any matters which plaintiff considered pertinent to a consideration of the issue of whether the scope of relief given Mrs. Sprogis should be made applicable to other stewardesses discharged by defendant pursuant to United's said no-marriage policy determined to be in violation of Title VII. On March 11, 1970 defendant filed its notice of appeal. Approximately two months later Carole Anderson Romasanta filed her complaint and on October 9, 1970 she was joined by Brenda Bailes Altman in an amended complaint filed on their own behalf and on behalf of all others similarly situated.

Prior to the bringing of these actions, United had revoked its policy and offered to reinstate all stewardesses whose employment was terminated under the policy and who had filed a protest against termination. Members of the proposed class therefore seek monetary relief. Those eligible could not have been unaware of their rights as many of them pursued their remedies before administrative bodies or in other federal courts prior to the time *Sprogis* was commenced and after defendant discontinued its no-marriage policy. It appears to the court that some accepted early offers of reinstatement or abandoned their claims and that the claims of some are barred by statutory limitations. Those eligible did not see fit to join in the *Sprogis* case. After it appeared Mrs. Sprogis was to have relief, the *Romasanta, et al.* action was brought here and other stewardesses now seek to benefit after the decision on the merits by moving for consolidation of Romasanta and extension of relief to all.

The Romasanta case is pleaded as a class action. There is no question that the relief on the discrimination question granted in *Sprogis*, if found applicable, can be extended to other stewardesses. However, *Sprogis* was decided on its merits and the other stewardesses must present their cases. It would be unjust to defendant to allow one-way intervention in *Sprogis*, for if class relief were extended, it is probable no class member would decline to join in a chance for monetary reward now that the discrimination issued has been determined.

A denial of the motion to convert *Sprogis* to a class action and denial of the motion to consolidate will necessitate a separate trial of *Romasanta*. But this court is of the opinion it cannot disregard the safeguards of Rule 23.

The court is now convinced that *Sprogis* cannot be converted to a class action. The issues in *Sprogis* have been decided without considering the claims of other members of a purported class. Furthermore, the court has considered the other requirements of Rule 23 and is not convinced that conversion would be justified. Having considered the composition of a possible

class on the basis of the parties' memoranda, it may well be that the class would fail for lack of numerosity. The major question of law or fact common to the class has already been decided, that of discrimination because of sex. It appears that there are no longer any common questions of law or fact, or predominating questions as required by Rule 23. Facts and circumstances would vary from individual to individual as would the damages. Defendant air line has the right to raise other defenses, as it appears it will, in *Romasanta* and these would have to be separately determined. This court cannot see that by joining the two cases it would arrive at some set formula or "a method superior to other fair and available methods for the fair and efficient adjudication of the controversy" (Rule 23(b)(3)).

A preliminary consideration of the facts and law in this matter might indicate there should be a consolidation of *Sprogis* and *Romasanta* to do equity to all parties. However, upon a careful consideration of all the facts, law and circumstances, this court is of a contrary view. The safeguards of Rule 23 must prevail here. "Justice" does not require the converting of *Sprogis* into a class action.

It is, therefore, Ordered that cause No. 68 C 2311, *Mary Burke Sprogis* v. *United Air Lines, Inc.* continue as an individual action. The court hereby appoints David J. Shipman as a Special Master to take testimony and to submit, within 60 days, for this court's consideration a recommendation as to a monetary award due Mary Burke Sprogis and in accordance otherwise with the decree of the court on January 21, 1970 and subject to the provisions of Title VII of the Civil Rights Act of 1964.

The court not having broadened the relief in *Sprogis*, the motion to consolidate that cause with No. 70 C 1157, *Romasanta, et al.* v. *United Air Lines, Inc.*, is denied. It is so ordered. The views of the court set forth herein are in no way prejudicial to the eventual disposition of the *Romasanta* case on its merits.

ENTER:

/s/ J. S. PERRY

Judge

Dated: Chicago, Illinois, June 14, 1972.

IN THE UNITED STATES DISTRICT COURT
* * (Title Omitted in Printing) * *

TRANSCRIPT OF PROCEEDINGS

had in the above-entitled cause before the Honorable J. Sam Perry, Senior Judge of said Court, in his courtroom in the United States Courthouse, Chicago, Illinois, on Friday, July 28, 1972, at the hour of two o'clock p.m.
Present:

Messrs. Cotton, Watt, Jones, King & Bowlus (104 West Adams Street, Chicago, Illinois 60603), by Mr. Richard F. Watt and Ms. Peggy Hillman, appeared for plaintiffs;

Messrs. Mayer, Brown & Platt (Suite 1955, 231 South LaSalle Street, Chicago, Illinois 60604), by Mr. Stuart Bernstein, appeared for defendant.

* * * * *

[3] [Mr. Bernstein:]

In summary, our position here is that the issues presented in Sprogis concerning the propriety of converting Sprogis into a class action are equally applicable to Romasanta, despite the fact that Romasanta was filed initially as a class action. The reasons we assert that are that in Romasanta, being filed after judgment in Sprogis, the same infirmities which we pointed out to your Honor in Sprogis are here present.

What I propose to do, your Honor, is to go through the requirements of Rule 23 and demonstrate to you how the same factors which motivated your Honor and upon which your Honor relied in his memorandum in Sprogis are equally present here.

One initial perhaps procedural matter, Sprogis was heard by your Honor on a motion to determine whether class action is appropriate in Sprogis and also on a motion to consolidate Romasanta and Sprogis.

Memoranda were filed in that proceeding, briefs were filed by both sides, and I submit that at this time your Honor has before him the memoranda on this issue of class action, the memoranda [4] that were filed by both parties in Sprogis. So that I think reliance on those memoranda is proper.

The Court: You wish to adopt them as part of your argumen

Mr. Bernstein: I would suggest that so that we have at this point the briefs before you that were filed there. In fact, two of them have the joint caption of Sprogis and Romasanta. You may recall that we argued in chambers, Mr. King and I did, the two motions, the motion to consolidate and the motion as to whether or not to proceed with Sprogis as a class action.

I think in the course of this, we then could rely on some of the matters asserted in those briefs, and your Honor may recall that in one of those briefs, it was effectively an affidavit because we had attached thereto an affidavit of an United official attesting to the validity of the facts that were asserted in the memorandum. I don't know whether they will become relevant in the course of my argument, but if I should refer to them, that is the basis upon which I will allege that.

Preliminarily, your Honor, I would

* * * * *

[6] the effect? Part of your argument is the fact that you filed a suit in a labor class action doesn't mean that it automatically becomes a class action. You must qualify under Rule 23.

Mr. Bernstein: That's correct.

The Court: I don't think there is any dispute about it.

Mr. Bernstein: Rule 23(a) sets out the prerequisite and Rule 23(b) what must be found to maintain a class action and 23(c) provides that there be a determination by the Court of the propriety of the class action. It is not an automatic matter at all.

First, the identity of the two cases. In the briefs filed by plaintiffs in the Sprogis case in which they urged consolidation of Sprogis and Romasanta, they alleged that these were the same suits, that the gravamen of the two suits is identical. I think that is fairly clear. They both attacked the policy of United Air Lines regarding the requirement that stewardesses should be unmarried, the policy which your Honor found in the memorandum in Sprogis had been abandoned even prior to the institution of the Sprogis case. The policy . . .

* * * * *

[17] [Mr. Bernstein:] Certainly those individuals' status ought not to be disturbed and they will not be appropriate in any class action.

If all of these were to be brought before the Court for the sole purpose of determining what damages, if any, they would be entitled to or what special defenses we would have, your Honor, we would simply have a series of individual cases which would go on for some indefinite period of time, depending on the ultimate scope of the class. No injustice is worked by not permitting this to proceed as a class action. Anybody that has a claim that is still viable can proceed with the claim. Those who have settled the case are back at work. Nobody has come forward in this case, except Mrs. Romasanta and Mrs. Altman, since Sprogis was filed.

Your Honor pointed out that nobody attempted to intervene in the Sprogis case. Nobody else has attempted to intervene in the Altman case, and that has been around since 1970. I submit that this matter ought to be put to rest and we ought to proceed to dispose of the claims of Mrs. Romasanta and Mrs. Altman as we are doing now with Mrs. Sprogis and be done with this matter.

* * * * *

[29] or state agency. Some of them did not.

The Court: You have more than one question, then.

Mr. Watt: No, I think that question, as far as whether or not all of them went to the EEOC, has been determined, your

Honor, insofar as the class is concerned, provided the class representatives went through the necessary procedure and got their suit letter, so that they were justified in bringing proceedings under Title VII of the 1964 Act. It is not necessary that all of the members of the class have done the same thing, as long as the representatives have done it. I think that issue has been decided.

Whether or not they went to the Union and filed grievances is entirely irrelevant as to whether they are part of the same class or not.

The Court: Isn't there a difference in the class between those who tendered resignations and those who didn't?

Mr. Watt: We are not raising that issue in this argument at this time, your Honor. We discussed that with you in connection with the [30] Sprogis case. I don't think that is a part of Mr. Bernstein's argument, and there is nothing before your Honor with respect to that now. It may be, after a fuller record, that your Honor would determine that only those who received an actual letter saying, "You are discharged because of your marriage," should be includable and not those who resigned under protest because they recognized if they didn't resign, they would be fired.

We are not really going into that.

The Court: You don't seek to make two classes?

Mr. Watt: No, we do not. We believe there is essentially one class here.

The Court: You think that is just a matter of fact?

Mr. Watt: I think that is a factual question.

Now Mr. Bernstein says that some of them accepted reinstatement; some of them did not. Some of them accepted the first offer of reinstatement and some of them accepted the second offer of reinstatement. I don't think that changes it—

* * * * *

[33] Mr. Watt: You may, you may, and I submit that that is something which we will have to go into at the point when we have developed the facts. We just don't have them.

I think, so far as those questions, as to the representative nature of these two plaintiffs, and who was in the class and so on, we simply have to have a fuller record.

The real argument I am directing my attention to is Mr. Bernstein's notion that with the Sprogis decision, he can completely defeat any subsequent class suit. I must say that baffles me completely, because by winning the Sprogis case, the rest of the stewardesses were wiped out of the court unless each and every one of them came into court separately.

The Court: With respect to everything I said in the Sprogis case, the heart of my decision was that here is one person who has come in and won a suit individually and that it could not then be readjudicated as a class action. That was my viewpoint there.

[34] Mr. Watt: I understand that.

The Court: I don't contend that a class action couldn't be maintained by other persons. It is my theory that if it is going to be a class action, let it be a class action in the beginning, so that the Court can have the full advice of all counsel and full defense. Certainly a defendant might make one defense and spend X dollars in defending an individual action; whereas, if it were made a class action, they might spend a great deal more time of investigation and legal talent and what not if it is a class action.

That was the heart of my theory.

Mr. Watt: I understand. If it did not begin as a class action, then it would be inequitable to the defendant to have it converted to a class action after judgment. I understand that, your Honor, and I think that is a perfectly defensible and proper position, as your Honor viewed it.

The Court: Let me hear from Mr. Bernstein first.

Mr. Watt: But I don't see how it applies to Mrs. Romasanta.

* * * * *

[41] The Court: Gentlemen, I would not like to try a guinea pig case. I have never been very great on trying guinea pig cases. I have in some instances done it when I couldn't help it, but I think my way of handling this is to take motion under advisement. I am still of the opinion that it would be better if we had all of these individuals in here and forget about the question of a class action and get these, since you are able to know them.

I would like to take it under advisement, allow you to do some discovery, and then come back and see who you find, how many you find, that are eligible in this class.

Now, I have continued this case and I would like to move it. I will give priority to it, but I would like, I think, to approach it and not make a decision on this today, not that I am hesitant about making a decision.

Mr. Watt: I understand.

The Court: Because if I deny the motion to- [42] day, it would be an appealable matter sooner or later, and we would have maybe ultimately a guinea pig case in this situation, after the Court of Appeals and back. I would like to terminate this bit of litigation.

Mr. Watt: I agree.

The Court: I believe the way to do it is to allow you some discovery on this question, and I will tell you quite frankly, I would be favorable toward, when you come in with your discovery, naming these individuals and see if we can't avoid the class action.

Mr. Watt: Let me ask a question, your Honor. I have no objection to it, but what I anticipate—

The Court: When I get through with it, it may be that I would have to oppose the class action.

Mr. Watt: What I anticipate is this: Supposing we should say, "Your Honor, you are absolutely correct; Mr. Bernstein is correct. We can't proceed with a class action. We will come in with individual plaintiffs."

We start adding individual plaintiffs [43] and Mr. Bernstein will assert the statute of limitations with regard to each and every one of them. There isn't any question that is what he has in mind.

Mr. Bernstein: Why not, your Honor?

Mr. Watt: That is exactly my point.

The Court: Wouldn't that apply if you had a class action?

Mr. Watt: It would not, your Honor. If these people are representative of a class and they adequately protect the interests of the class and we meet the other requirements of Rule 23, then all the members of the class so determined are entitled to benefits in a determination ultimately reached in any judgment. Because you could have a class of 10,000 people, some of whom, as of the time the lawsuit is filed and even as of the time the judgment is reached, never heard of the case.

The Court: Your statute of limitations would be raised on accounting ultimately, anyway.

Mr. Watt: The statute of limitations or the amount that anybody was entitled to recover would be determined ultimately after judgment, but [44] if a person is properly a member of the class, the statute of limitations doesn't run against him if he is in the class.

The Court: We will go into that. I am going to give you an opportunity to get some discovery on this.

Mr. Bernstein: Your Honor, may I ask a question on this, because this becomes quite critical. Discovery somehow ought to be limited to certain classes of girls, otherwise we have an absolutely impossible task before us.

The Court: It is classified by the complaint, isn't it?

Mr. Bernstein: The class in the complaint is really quite broad, your Honor. We had opposed a similar allegation in Sprogis when we were considering the alternative of what should be Class B. For example, your Honor, we have argued before you that there were a number of the girls, with respect to whom plaintiff alleges are class, who have accepted offers of settlement made prior to the institution of any litigation.

I cited to you the decision that your Honor rendered in the American Air Lines' [45] pregnancy case, in which a settlement was upheld after the suit was filed, based on reinstatement only, and which was affirmed by the Court of Appeals. Is that to be opened up again? Is that to be opened up again?

I think we have to have some direction here before we talk about discovery.

Mr. Watt: We served on Mr. Bernstein—

The Court: The fact that it is discoverable does not make it an admission in evidence.

Mr. Watt: Of course not.

Mr. Bernstein: It is simply the burden it imposes upon us, your Honor, in terms of discovery.

The Court: It should not be too big a burden. The names of the persons who were discharged under those circumstances during that period of time, and we will worry about the classification of it. I have well in mind what you have to say. I know there are a lot of limitations.

Mr. Watt: We served on Mr. Bernstein, some time in June —and my copy does not indicate the date—a notice to take the depositions of three supervisory persons at United Air Lines, [46] who according to our information were most likely to have knowledge with respect to the relationship to United Air Lines and these stewardesses during the period of time involved.

The Court: I will tell you what I would like to do. The first day I am back here, in order to expedite it, I would like

to set this forward for a status call on that day, not trying to cut off anything. I would like to hear you at 1:30 on Monday, the 11th of September. We will call it for a status call and let you proceed with discovery and take some depositions.

At that time you will be prepared to talk about the classes and we can sit down and set a cut-off date for final discovery, if further discovery is needed, and also define the class, so that there would be a limitation.

I see what your point is. We don't want to go on endlessly.

Mr. Watt: We don't want to, either.

The Court: Nothing will be binding this day. I will simply let you go ahead and take some depositions, a reasonable number of depositions, and be prepared, both of you, to state your positions [47] on that day as to the classifications. Because we are not going to open this up for all the world.

Mr. Bernstein: May I ask Mr. Watt if the notice that he served on us on June 22 is the basis upon which he is going to proceed with discovery, the names you have listed in this document?

Mr. Watt: On the basis of what we now know, that is what we intend to do, yes, sir.

Mr. Bernstein: Your Honor, let me point out the problems which I have been trying to assert all afternoon. Among the names on this list are the names of Marilyn Lansdale and Kathryn Meirmuntz. Both of these young ladies have been involved in litigation which has proceeded to final judgment. Are they to be brought in again, or is discovery to be allowed with respect to this?

The Court: We will know after we hear the final litigation on that.

Mr. Watt: Clearly, your Honor, if United Air Lines has—

The Court: That will have to be determined. It may be that their litigation is over and res adjudicata.

[48] Mr. Bernstein: It is a matter of record, your Honor, Lansdale was determined by the Court of Appeals for the Fifth Circuit.

Mr. Watt: One document will establish that, your Honor, and that is a copy of the judgment.

Mr. Bernstein: Mr. Watt, you know that. You know what has happened in Lansdale. Why do you even include this name? You know what happened with Meirmuntz. I don't understand this.

The Court: I don't want to waste any time on it, I assure you that, and I don't want to pass judgment, but it would seem to me that somebody who had a final judgment would be res adjudicata.

Mr. Watt: We are not going to burden United Air Lines with needless discovery.

Mr. Bernstein: It is nice to have some assurance of that, your Honor, but I would feel a little better about it if I had the assurances of the Court.

The Court: Indicate to him some of them so there would be no dispute about it before some emergency judge who won't know a thing about it.

Mr. Watt: Your Honor, we have no intention, [49] it is not to our interests, to go into a lot of extraneous matters. As I have indicated, and Mr. King has indicated on numerous occasions, there are many facts which simply we do not have and United Air Lines does.

Let's get the facts with regard to whatever total number of stewardesses are involved by reason of their having been terminated, and let's come back before your Honor.

The Court: That is the reason I am fixing it for a status call. I don't want to try to have a hard and fast rule here, and I don't want you to, so to speak, harass them; but yet, I do think that you are entitled to have the names made available to you of some of these people.

Now after you have the names and you have discussed it with your clients and some of them, you would be able to set up the kind of classification that you wish, and counsel will be able to object to it and set up the kind that he believes should be made here, if it is a class action.

On the other hand, when you get through with this, you may find out that you [50] know enough that we may have the individuals before us, and then we would avoid any controversy over class actions.

Mr. Watt: Very good.

The Court: The important thing is if we could get the individuals here, then we would have a question of fact only and we wouldn't have a possible guinea pig lawsuit over a class action to go back up to the Court of Appeals, because who knows how the ball bounces when it gets up there? Depends on the three in the panel that is chosen.

I would like to have it resolved on a factual basis as to each individual, if at all possible.

Mr. Bernstein: I take it, your Honor, then, our motion to strike has been taken under advisement?

The Court: It is just continued generally. It is taken under advisement.

Mr. Watt: Very good. Thank you, your Honor.

(Which were all the proceedings had in the above-entitled cause on the day and date aforesaid.)

IN THE UNITED STATES DISTRICT COURT
• • (Title Omitted in Printing) • •

TRANSCRIPT OF PROCEEDINGS

had in the above-entitled cause before the Honorable J. Sam Perry, Senior Judge of said Court, in his courtroom in the United States Court House, Chicago, Illinois, on Monday, September 11, 1972, at the hour of 1:30 o'clock p.m.

Present:

Messrs. Cotton, Watt, Jones, King & Bowlus (104 West Adams Street, Chicago, Illinois 60603), by Mr. Richard F. Watt and Ms. Peggy Hillman, appeared for plaintiffs;

Messrs. Mayer, Brown & Platt (Suite 1955, 231 South La Salle Street, Chicago, Illinois 60604), by Mr. Stuart Bernstein and Mr. James Gladden, appeared for defendant.

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[23] duration. It is not of indefinite duration. He is attempting to resuscitate a right which these girls let lapse by sitting back, resting on their rights. The statute of limitations always means that. There is a limited period in which a complaint can be made. That period has long since passed, and what counsel is attempting to do is to revive that right. It is not a matter of contract rights. We are talking about statutory rights, rights of every kind. Your Honor has the authority to determine what is an appropriate class in this action, and I am suggesting to you, apart from other arguments that we have raised at earlier stages of this, that the class should fail for lack of numerosity because the class ought to be limited to those who have indicated in a timely manner some protest against the action taken by the company. They cannot sit back for six years or for four years and then come in here and say that they want to be part of this class. It is grossly unfair and contrary to the Rule.

The Court: Gentlemen, I have thought a good deal this summer of this problem, and I am of the opinion that I must grant this motion to [24] strike the class limitation and limit the class to those who have made a protest. Over this great length of time, you have the statute of limitations, and I feel I must grant the defendant's motion in this matter. I want to say at this time that any individual who comes within this classification who wishes to come in will be admitted.

Mr. Bernstein: Your Honor, may I ask one clarification. As I have represented to you, a number of those in that group who protested have had their claims settled by other tribunals and some have settled the matter.

The Court: Well, those who have settled, that is it. We are limited to those people who have not settled and disposed of their claims. If there are such other persons whose claims have not been settled, I would be glad to admit them as co-plaintiffs.

Mr. Bernstein: Would they come in, your Honor, on the joinder theory, because we have, as I represented, no more than ten.

The Court: They come in under the joinder theory.

Mr. Bernstein: On joinder?

[25] The Court: Yes. I think that is a proper disposition, Mr. Bernstein. Prepare an appropriate order on that basis.

I want to make it clear that any individual, as I have indicated, can come in.

Mr. Bernstein: Who has protested and not otherwise settled.

The Court: Yes.

Mr. Bernstein: All right, sir.

Mr. Watt: Let me just raise one question with respect to that, because I think if Mr. Bernstein prepares the order we may wish to file something in response to the order to protect our position.

The Court: I will continue it for a final order until he presents it so I can hear you if you have something else.

Mr. Watt: Yes. I think that is what we will want to do, your Honor, and I just raise this now, I think we will want to say to your Honor that this is a controlling question with respect to which we should have an opportunity of having the matter heard on appeal at this point, because if there is a class which encompasses more than the very limited number who are going to come in individually—

[26] The Court: Counsel, suppose you prepare an order in accordance with what you think it ought to be, and let him prepare it in accordance with what his viewpoint of it is. Include what you think ought to be added, and let's set a time for you to come in on it.

Mr. Watt: Then may I ask one further question, your Honor. May we, within the limitations that your Honor has set, may we as counsel for the individual plaintiffs be authorized to communicate?

The Court: To communicate? By all means. There is no question about it.

Mr. Watt: May we have an understanding from Mr. Bernstein that other than the three who he has mentioned that are before the New York tribunal, that no further settlements will be made with respect to these individuals unless we at least have some notice of it?

The Court: Of these seven you are talking about?

Mr. Watt: He comes up with seven. I do not understand his arithmetic, to be honest with you.

The Court: With the understanding that except as to those three he has already mentioned, they . . .

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IN THE UNITED STATES DISTRICT COURT

* * (Title Omitted in Printing) * *

MOTION TO INTERVENE AS PLAINTIFFS.

Evelyn A. Ambrose, Elizabeth Glenn Ashworth, Sandra Moore Ballinger, Sarah A. Boling, Mary Weis, Carol Elaine Brackle, Marlene Riehl Carney, Doris Rivas Collins, Catherine Reese Colvin, Bernadette Dixon, Susan Fusco, Helen Read Gunst, Joanne Fitzgerald Hamersley, Barbara A. Klocek, Gloria Lala, Patricia M. Moon, Judith Hopkins Pendleton, Lynn Mason Raymond, Janice Schmidt Rensch, Jeanette Byers Schlau, Rita Gardino Trubshaw, Terry Baker Van Horn, Diane M. Welty and Mary O'Connor Whitmore move for leave to intervene as plaintiffs in this action, in order to assert the claim set forth in their proposed complaint, a copy of which is attached, on the ground that the applicants' claims and the main action have questions of law and fact in common.

Attorneys for Plaintiffs have made every effort to communicate with all persons who may be eligible to intervene in this action as Plaintiffs as authorized by this Court on September 11, 1972. However, attorneys for Plaintiffs have been unable to locate seven persons of whom they are aware and therefore request that this Court allow attorneys for Plaintiffs to pursue their efforts to locate these persons by publishing notices in newspapers located in various stewardess domiciles and to allow such eligible persons to intervene as plaintiffs at such time as they may be located.

IRVING M. KING
RICHARD F. WATT
PEGGY A. HILLMAN
Attorneys for Plaintiffs

IN THE UNITED STATES DISTRICT COURT

* * (Title Omitted in Printing) * *

INTERVENORS' COMPLAINT

The Plaintiff-Intervenors, by and through their attorneys, complain of the Defendant and state as follows:

1. This action arises under Title VII of the Civil Rights Act of 1964, 42 U. S. C. Section 2000e *et seq.* Jurisdiction of this Court is invoked pursuant to such Act, particularly Title VII, Section 706(f) 42 U. S. C. Sec. 2000f.

2. Each Plaintiff-Intervenor is a person of the female sex who was employed by the Defendant as a flight cabin attendant, or airline stewardess, until her position was terminated by the Defendant. Each Plaintiff-Intervenor took actions to protest this termination.

a. Plaintiff-Intervenor, Evelyn A. Ambrose, commenced employment as a Stewardess with Defendant on or about March 17, 1965. Her employment was terminated on or about November 9, 1967. She protested this termination by filing a grievance pursuant to the provisions of the collective bargaining agreement between the Air Line Pilots Association, of which she was a member, and Defendant and by filing charges with the Equal Employment Opportunity Commission against Defendant in accordance with the provisions of Title VII.

b. Plaintiff-Intervenor, Elizabeth Glenn Ashworth, commenced employment as a stewardess with Defendant on or about April 5, 1962. Her employment was terminated on or about October 19, 1962. She protested this termination by filing a grievance pursuant to the provisions of the collective bargaining agreement between the Air Line Pilots Association, of which she was a member, and Defendant, and by filing charges with the Equal Employment

Opportunity Commission against Defendant in accordance with the provisions of Title VII.

c. Plaintiff-Intervenor, Sandra Moore Ballinger, commenced employment as a stewardess with Defendant on or about April 19, 1962. Her employment was terminated on or about January 17, 1967. She protested this termination by filing a grievance pursuant to the provisions of the collective bargaining agreement between the Air Line Pilots Association, of which she was a member, and Defendant.

d. Plaintiff Intervenor, Sarah A. Boling, commenced employment as a stewardess with Defendant on or about March 24, 1961. Her employment was terminated on or about February 17, 1966. She protested this termination by filing a grievance pursuant to the provisions of the collective bargaining agreement between the Air Line Pilots Association, of which she was a member, and Defendant.

e. Plaintiff-Intervenor Mary Weis, commenced employment as a stewardess with Defendant on or about October 9, 1959. Her employment was terminated on or about September 5, 1967. She protested this termination by filing a grievance pursuant to the provisions of the collective bargaining agreement between the Air Line Pilots Association, of which she was a member, and Defendant, and by filing charges with the New York Division of Human Rights against Defendant.

f. Plaintiff-Intervenor, Carol Elaine Brackle, commenced employment as a stewardess with Defendant on or about June 11, 1962. Her employment was terminated on or about November 10, 1966. She protested this termination by filing a grievance pursuant to the provisions of the collective bargaining agreement between the Air Line Pilots Association, of which she was a member, and Defendant.

g. Plaintiff-Intervenor, Marlene Riehl Carney, commenced employment as a stewardess with Defendant on or about May 20, 1964. Her employment was terminated on

or about October 18, 1966. She protested this termination by filing a grievance pursuant to the provisions of the collective bargaining agreement between the Air Line Pilots Association, of which she was a member, and Defendant, and by filing charges with the Equal Employment Opportunity Commission against Defendant, in accordance with the provisions of Title VII.

h. Plaintiff-Intervenor, Doris Rivas Collins, commenced employment as a stewardess with Defendant on or about January 13, 1965. Her employment was terminated on or about May 20, 1967. She protested this termination by filing charges with the Equal Employment Opportunity Commission against Defendant, in accordance with the provisions of Title VII.

i. Plaintiff-Intervenor, Catherine Reese Colvin, commenced employment as a stewardess with Defendant on or about April 18, 1963. Her employment was terminated on or about August 8, 1966. She protested this termination by filing a grievance pursuant to the provisions of the collective bargaining agreement between the Air Line Pilots Association, of which she was a member, and Defendant.

j. Plaintiff-Intervenor, Bernadette Dixon, commenced employment as a stewardess with Defendant on or about October 17, 1964. Her employment was terminated on or about February 7, 1968. She protested this termination by filing a grievance pursuant to the provisions of the collective bargaining agreement between the Air Line Pilots Association, of which she was a member, and Defendant, and by filing charges with the Equal Employment Opportunity Commission against Defendant in accordance with the provisions of Title VII.

k. Plaintiff-Intervenor, Susan Fusco, commenced employment as a stewardess with Defendant on or about August 15, 1956. Her employment was terminated on or about October 15, 1966. She protested this termination

by filing a grievance pursuant to the provisions of the collective bargaining agreement between the Air Line Pilots Association, of which she was a member, and Defendant and by calling the Equal Employment Opportunities Commission.

l. Plaintiff-Intervenor, Helen Read Gunst, commenced employment as a stewardess with Defendant on or about February 21, 1965. Her employment was terminated on or about February 23, 1966. She protested this termination by filing a grievance pursuant to the provisions of the collective bargaining agreement between the Air Line Pilots Association, of which she was a member, and Defendant, and by filing a charge with the New York Division of Human Rights.

m. Plaintiff-Intervenor, Joanne Fitzgerald Hamersley, commenced employment as a stewardess with Defendant on or about October 13, 1960. Her employment was terminated on or about December 22, 1967. She protested this termination by filing charges with the Equal Employment Opportunity Commission against Defendant in accordance with the provisions of Title VII.

n. Plaintiff-Intervenor, Barbara A. Klocek, commenced employment as a stewardess with Defendant on or about August 22, 1963. Her employment was terminated on or about June 28, 1967. She protested this termination by filing charges with the Equal Employment Opportunity Commission against Defendant in accordance with the provisions of Title VII.

o. Plaintiff-Intervenor, Gloria Lala, commenced employment as a stewardess with Defendant on or about July 11, 1956. Her employment was terminated on or about September 22, 1968. She protested this termination by filing a grievance pursuant to the provisions of the collective bargaining agreement between the Air Line Pilots Association, of which she was a member, and Defendant.

p. Plaintiff-Intervenor, Patricia M. Moon, commenced employment as a stewardess with Defendant on or about March 2, 1961. Her employment was terminated on or about November 12, 1967. She protested this termination by filing a grievance pursuant to the provisions of the collective bargaining agreement between the Air Line Pilots Association, of which she was a member, and Defendant, and by filing charges with the Equal Employment Opportunity Commission against Defendant in accordance with the provisions of Title VII.

q. Plaintiff-Intervenor, Judith Hopkins Pendleton, commenced employment as a stewardess with Defendant on or about March 8, 1962. Her employment was terminated on or about January 29, 1967. She protested this termination by filing a grievance pursuant to the provisions of the collective bargaining agreement between the Air Line Pilots Association, of which she was a member, and Defendant.

r. Plaintiff-Intervenor, Lynn Mason Raymond, commenced employment as a stewardess with Defendant on or about June 9, 1960. Her employment was terminated on or about June 14, 1966. She protested this termination by filing charges with the Equal Employment Opportunity Commission against Defendant in accordance with the provisions of Title VII.

s. Plaintiff-Intervenor, Janice Schmidt Rensch, commenced employment as a stewardess with Defendant on or about August 20, 1966. Her employment was terminated on or about July 15, 1968. She protested this termination by filing a grievance pursuant to the provisions of the collective bargaining agreement between the Air Line Pilots Association, of which she was a member, and Defendant.

t. Plaintiff-Intervenor, Jeanette Byers Schlau, commenced employment as a stewardess with Defendant on or about June 21, 1962. Her employment was terminated on or about December 8, 1966. She protested this termination

by filing a grievance pursuant to the provisions of the collective bargaining agreement between the Air Line Pilots Association, of which she was a member, and Defendant, and by filing charges with the Equal Employment Opportunity Commission against Defendant in accordance with the provisions of Title VII.

u. Plaintiff-Intervenor, Rita Gardino Trubshaw, commenced employment as a stewardess with Defendant on or about August 18, 1965. Her employment was terminated on or about July 9, 1968. She protested this termination by filing a grievance pursuant to the provisions of the collective bargaining agreement between the Air Lines Pilots Association, of which she was a member, and Defendant.

v. Plaintiff-Intervenor, Terry Baker Van Horn, commenced employment as a stewardess with Defendant on or about June 6, 1963. Her employment was terminated on or about January 12, 1966. She protested this termination by filing a grievance pursuant to the provisions of the collective bargaining agreement between the Air Line Pilots Association, of which she was a member, and Defendant, and by filing charges with the Equal Employment Opportunity Commission against Defendant in accordance with the provisions of Title VII.

w. Plaintiff-Intervenor, Diane M. Welty, commenced employment as a stewardess with Defendant on or about March 23, 1961. Her employment was terminated on or about November 9, 1966. She protested this termination by filing a grievance pursuant to the provisions of the collective bargaining agreement between the Air Line Pilots Association, of which she was a member, and Defendant, and by filing a charge with the New York Division of Human Rights against Defendant.

x. Plaintiff-Intervenor, Mary O'Connor Whitmore, commenced employment as a stewardess with Defendant on or

about July 11, 1957. Her employment was terminated on or about January 1, 1966. She protested this termination by filing a grievance pursuant to the provisions of the collective bargaining agreement between the Air Line Pilots Association, of which she was a member, and Defendant, and by filing charges with the Equal Employment Opportunity Commission against Defendant in accordance with the provisions of Title VII.

3. Defendant, United Air Lines, Inc., is a corporation organized and existing by virtue of the laws of the State of Delaware. Its principal office is located in Elk Grove Village, Cook County, State of Illinois, which is within the Northern District of Illinois.

4. Title VII of the Civil Rights Act of 1964 makes it an unlawful employment practice for an employer, among other practices, to fail or refuse to hire any individual or otherwise discriminate against any individual with respect to compensation, terms, conditions or privileges of employment because of sex, except where sex is a bona fide occupational qualification reasonably necessary to the normal operation of that particular business or enterprise.

5. At all relevant times the Defendant maintained in effect a rule, regulation or policy, pertaining solely to females employed as stewardesses, requiring that stewardesses be unmarried when first employed and that they thereafter remain unmarried while so employed. The policy of Defendant, as in effect at the time of Plaintiff-Intervenors' terminations, calls for the termination of the employment of any stewardess who married.

6. Defendant hires both male and female employees. There is no rule, regulation or policy of the nature described in Paragraph 5 above which is or has been maintained or enforced against male employees of the Defendant. Pursuant to the above rule or regulation Defendant has terminated the employment of female stewardesses immediately upon notification of the mar-

riage of such employee, but no action is or has been taken against male employees upon marriage, and male employees are permitted to continue employment of Plaintiff-Intervenors as stewardesses pursuant to the above-described policy or rule and in violation of Title VII of the Civil Rights Act of 1964, for the sole reason that each is a female and became married while in the employ of Defendant in the capacity of stewardess.

7. Defendant has committed and is now intentionally committing unlawful employment practices with respect to the Plaintiff-Intervenors by discriminating against them because of their sex in summarily and arbitrarily terminating their employment as stewardesses because of their marriage.

8. The practices and actions of the Defendant described in Paragraphs 5, 6, and 7 above constitute unlawful employment practices in violation of Title VII, Section 2000e *et seq.*, of the Civil Rights Act of 1964. As a result thereof, the Plaintiff-Intervenors have been subjected to discrimination because of their sex with respect to conditions and privileges of employment all in violation of said statute. Plaintiff-Intervenors have been and are continuing to be wrongfully deprived of employment and substantial compensation as a direct and proximate result of the unlawful employment practices hereinabove described.

9. Plaintiff-Intervenors have no other remedy at law, and this suit is their only means of securing adequate relief.

WHEREFORE, Plaintiff-Intervenors pray that this Court issue an injunction restraining Defendant from discriminating against Plaintiff-Intervenors because of their sex in violation of Title VII of the Civil Rights Act of 1964; that the Court order the Defendant to reinstate Plaintiff-Intervenors in their positions as stewardesses; that the Court order the Defendant to make payment to each Plaintiff-Intervenor equal to all loss of compensation from the time of her illegal discharge to the date of reinstatement; that the Court order Defendant to restore to each

Plaintiff-Intervenor any and all employment privileges and opportunities, including all rights of seniority or longevity of employment, which would have accrued to her had her employment not been interrupted by the unlawful discharge; that the Court order, adjudge and declare that the rule, regulation or policy of the Defendant under which Defendant discharges females from their employment as stewardesses is unlawful and unenforceable and restrain and enjoin its enforcement in the future; and that the Court order and decree such other and further relief as may be deemed just.

RICHARD F. WATT
IRVING M. KING
PEGGY A. HILLMAN
By: /s/ PEGGY A. HILLMAN
Attorneys for Plaintiff-Intervenors

UNITED STATES DISTRICT COURT
* * (Title Omitted in Printing) * *

AFFIDAVIT.

C. P. Hutchens, being first duly sworn, on oath deposes and says:

1. I am the Director of Employment and Placement for United Air Lines, Inc., and have knowledge of the facts set forth herein.

2. The number of stewardesses in the employ of United as of the following respective dates was:

December 31, 1968	4900
December 31, 1969	5401
December 31, 1970	5971
December 31, 1971	5278
September 30, 1972	6401

3. The average length of service of all stewardesses in the employ of United as of December 31, 1969 was 2.9 years.

4. Between November 1, 1968 and December 31, 1971, 455 stewardesses voluntarily resigned from employment with United, assigning marriage as the reason. During the same period, 363 stewardesses went on leave of absence because of marriage and did not thereafter return to work upon termination of leave of absence.

5. I have read the affidavit of Daniel E. Kain, dated September 25, 1972, relating to the above-captioned matter and am familiar with its contents. On or about January 3, 1969, United offered unconditional reinstatement to those stewardesses described in paragraph 3 of the Kain affidavit who had not accepted the settlement offer of November 14, 1968, or who had not tendered resignation.

/s/ C. P. HUTCHENS

Subscribed and sworn to before me this 6th day of November, 1972.

/s/ EARL G. DOLAN,
Notary Public.

My commission expires: October 19, 1976.

IN THE UNITED STATES DISTRICT COURT
* * (Title Omitted in Printing) * *

MEMORANDUM AND ORDER

Plaintiffs Carole Anderson Romasanta and Brenda Bailes Altman are former stewardesses employed by defendant United Air Lines, Inc. ("United"). They allege they have been subjected to discrimination because of their sex with respect to conditions and privileges of their employment. Their action challenges the validity, under Title VII of the Civil Rights Act of 1964, of United's policy that stewardesses in its employ be and remain unmarried.

The suit was brought as a class action to secure relief similar to that granted by this court in *Sprogis* v. *United Air Lines, Inc.*, No. 68 C2311. On January 21, 1970 in its decision in *Sprogis*, this court found that United's enforcement of its no-marriage policy for stewardesses resulted in her discharge and discriminated against Mrs. Sprogis because of her sex. It ordered, among other things, the taking of an accounting as to her claim for compensation for lost pay. United appealed. On June 16, 1971 the Court of Appeals affirmed this court's ruling in *Sprogis* and on December 14, 1971 the Supreme Court denied United's petition for writ of certiorari.

Approximately four months after this court's decision in *Sprogis* the complaint in this case was filed on May 15, 1970. In *Sprogis* the court had left open the question as to whether the relief afforded Mrs. Sprogis should be made applicable to other stewardesses discharged by United pursuant to its no-marriage policy. The *Romasanta* case was held on the court's past case calendar while disposition of Sprogis was pending in the courts above. Upon remand the court considered the issue of whether class relief was appropriate in *Sprogis* and a motion to consolidate *Romasanta* with *Sprogis*.

In its Memorandum and Order of June 14, 1972, the court denied the motion to convert *Sprogis* into a class action and to consolidate it with *Romasanta* for reasons in its Memorandum and Order set forth. Among other things the court therein pointed out that after it appeared Mrs. Sprogis was to have relief the Romasanta action was brought here and other stewardesses sought to benefit *after a decision on the merits.* The court found it would be unjust to defendant to allow one-way intervention for if class relief were extended, it was probable no class member would decline to join in a chance for monetary reward once the discrimination issue had been determined. However, it again pointed out that the relief granted on the discrimination issue in *Sprogis,* if found applicable, could be extended to other stewardesses but that they must present their cases on the merits. The court specifically stated that its views were in no way prejudicial to the eventual disposition of the *Romasanta* case on its merits. (The *Sprogis* case is now continuing as an individual action for the purpose of determining her lost pay.)

Defendant United has moved the court to strike all allegations of the *Romasanta* complaint relating to class action and to direct the matter to proceed as an individual action on behalf of plaintiffs Carole Anderson Romasanta and Brenda Bailes Altman. At subsequent hearings the court indicated it was of the opinion the action should not proceed as a class action although it would allow additional stewardesses to intervene by way of joinder as addition[al] parties plaintiff if their joinder is proper. Thereafter a motion to intervene was filed by 24 individuals.

The court has considered the motion to strike the class allegations and the motion to intervene, the memoranda of counsel for the parties and those affidavits and exhibits submitted. It has heard argument of counsel at several hearings. It now is of the opinion those individuals allowed to join in this action should be limited to all former stewardesses who resigned or who were terminated because of United's said policy between July 2, 1965 and November 7, 1968 and who thereafter pro-

tested the no-marriage policy or termination by filing a valid grievance under the applicable bargaining agreement between United and the Air Line Pilots Association ("ALPA") or a valid complaint with the Equal Employment Opportunity Commission ("EEOC") or any appropriate State agency. It will exclude, however, any present or former stewardess of United who has accepted an offer of reinstatement pursuant to the agreement between United and ALPA, or any stewardess who voluntarily withdrew or abandoned her claim, or who pursued any other administrative or judicial remedy to conclusion.

Involved here are some stewardesses who resigned because of marriage and did protest the no-marriage policy of United by filing grievances under the collective bargaining agreement between defendant and ALPA or by filing charges under Title VII. Defendant contends others did not protest and it is reasonable for the union and defendant United to assume that since they did not protest they had no further interest in further employment. It appears to the court intervenors should be limited to those who protested, did not settle and were truly interested in employment.

On November 7, 1968 United revoked its no-marriage policy by agreement with the Air Line Pilots Association, the authorized collective bargaining representative of the stewardesses in United's employ. Under the agreement United offered reinstatement to all stewardesses terminated as a consequence of the no-marriage policy and who had filed a valid grievance under the collective bargaining agreement or a valid complaint with the Equal Employment Opportunity Commission under Title VII of the Civil Rights Act of 1964 or before State agencies. Said Letter of Agreement stated, in part: "Acceptance of reinstatement will be in full satisfaction of any grievance or complaint filed by such stewardesses."

According to the defendant, 30 stewardesses qualified for and were offered reinstatement under the said agreement; eleven accepted; three tendered resignations; two did not respond and United received no further communication from them. Some

instituted civil actions. Three of the 30 now have claims pending before the State of New York Division of Human Rights.

Defendant in its response to the motion of the 24 to intervene does not object to the intervention as plaintiffs of eight stewardesses. The court, therefore, will grant the motion to intervene of these eight, namely, Sandra Moore Ballinger, Sarah A. Boling, Carol Elaine Brackle, Catherine Reese Colvin, Susan Fusco, Judith Hopkins Pendleton, Terry Baker Van Horn and Mary O'Connor Whitmore. It appears these eight individuals protested their termination by filing a grievance pursuant to the provisions of the collective bargaining agreement between United and ALPA, of which they were members. Some of them also filed charges with the EEOC. As to Marlene Riehl Carney it appears that a dispute has been resolved as to whether she did nor did not file a grievance under the collective bargaining agreement, and upon a hearing defendant indicated no objection to her joinder. Marlene Riehl Carney is therefore added as an additional party plaintiff.

Defendant objects to the inclusion of seven stewardesses on the grounds that they accepted reinstatement in full satisfaction of any grievance or complaint they had pursuant to the agreement aforesaid between United and ALPA. Plaintiffs' attorney argues the acceptance of reinstatement does not preclude them from pursuing their remedy under Title VII. They accepted reinstatement in full satisfaction of their grievance. The motion to intervene is denied as to these seven, namely, Elizabeth Glenn Ashworth, Bernadette Dixon, Barbara A. Klocek, Gloria Lala, Patricia M. Moon, Janice Schmidt Rensch and Jeanette Byers Schlau.

Three others of the 24 seeking to intervene here, namely, Mary Weis, Helen Read Gunst and Diane M. Welty, have filed charges with the New York Division of Human Rights against United. Upon hearing it appears the issues of liability has already been determined there and that the issue of the amount of such liability is being determined. Although counsel argues that these three should be included in the suit here until such

time as the settlement of their claims is actually consummated and "scrutinized" by this court, it is sufficient that they are pursuing their remedies to near conclusion elsewhere. Their exclusion does not preclude their bringing their own action if the settlements are not consummated. The motion of Mary Weis, Helen Read Gunst and Diane M. Welty to intervene in this action is denied.

Upon hearing it was also determined Doris Rivas Collins has filed an action in the District Court of Washington at Seattle. She is pursuing her judicial remedy elsewhere and her motion to intervene in this action is also denied.

To its response to the motion to intervene, United attached copies of letters from Evelyn A. Ambrose in which she accepted an offer of reinstatement pursuant to the United and ALPA agreement. United further represents that she did not wish reinstatement but was withdrawing her grievance. In her case plaintiffs' attorney contends that her acceptance did not have the effect of precluding her from pursuing a remedy under Title VII and denies that her acceptance without reinstatement constituted a binding waiver or revocation of her rights. Mrs. Ambrose accepted an offer of reinstatement and withdrew her grievance. Her motion to intervene here is denied.

The facts as to the situations of the three remaining who seek to intervene are more in controversy. United objects to the inclusion here of Rita Gardino Trubshaw on the ground she made no response to a letter of November 14, 1968 offering her reinstatement and did not communicate with United and it contends she therefore abandoned her claim. This is disputed. In Mrs. Trubshaw's case it is contended that she notified United of her rejection of the offer, that she did not receive a second unconditional offer of reinstatement and that she did not withdraw her grievance or abandon her claim. In the case of Lynn Mason Raymond defendant objects on the ground she did not file a valid grievance under the collective bargaining agreement nor, to its knowledge, with the EEOC. It appears her employment was terminated in 1966. Attached to plaintiff-intervenor's

reply is an exhibit showing Mrs. Raymond did file charges with the EEOC and that the District Director of the EEOC made findings relative to her complaint. Defendant also objects to the inclusion of Joanne Fitzgerald Hamersley on the ground that it has no knowledge she filed a valid grievance under the collective bargaining agreement or with EEOC. It appears from the exhibits Mrs. Hamersley did file charges of discrimination with the EEOC in November and December 1970. She sets forth she resigned voluntarily December 23, 1967 because she was getting married.

The court will allow these three, namely, Rita Gardino Trubshaw, Lynn Mason Raymond and Joanne Fitzgerald Hamersley to join in this action.

In considering the equities, it does not seem fair and reasonable to this court that it should allow a stewardess terminated prior to November 7, 1968 to intervene here unless she indicated in a timely manner her desire to continue working by taking some affirmative action to protest United's policy or seek reinstatement.

Attorneys for plaintiffs say they have made every effort to communicate with all persons who may be eligible to intervene in this action as plaintiffs as authorized by this court on September 11, 1972 but have been unable to locate seven persons of whom they are aware. They request the court to allow them to pursue their efforts to locate these persons by publishing notices in newpapers in various stewardess domiciles and then to allow them to intervene as they may be located. That part of the motion to intervene is denied.

It is ordered that all allegations of the complaint relating to class action be stricken and that this action not proceed as a class action. The class of plaintiffs who protested their termination does not meet the numerosity requirement of Rule 23(a) of the Federal Rules of Civil Procedure. Those individuals whose motions to intervene are being granted will come in by way of joinder as additional parties plaintiff. Based on the con-

troversies already evident between counsel on the fact situations as to various stewardesses, the court is more than ever convinced a class action would not be expeditious or efficient. The court itself has attempted to chart the situations as to each of the 24 individuals seeking to intervene, and based on only what is before it is more than ever convinced that it has a series of individual suits within a suit, that the merits may vary from individual to individual, that all are not similarly situated.

The motion to intervene is granted as to Sandra Moore Ballinger, Sarah A. Boling, Carol Elaine Brackle, Catherine Reese Colvin, Susan Fusco, Judith Hopkins Pendleton, Terry Baker Van Horn, Mary O'Connor Whitmore and Marlene Riehl Carney. It is denied as to Elizabeth Glenn Ashworth, Bernadette Dixon, Barbara A. Klocek, Gloria Lala, Patricia M. Moon, Janice Schmidt Rensch, Jeanette Byers Schlau, Mary Weis, Helen Read Gunst, Diane M. Welty, Evelyn A. Ambrose and Doris Rivas Collins. The motion to intervene as it relates to Rita Gardino Trubshaw, Lynn Mason Raymond and Joanne Fitzgerald Hamersley also is granted. Defendant United is ordered to answer within twenty days.

The court is of the opinion that its order involves controlling questions of law as to which there is substantial ground for difference of opinion and that an immediate appeal from its order may materially advance the ultimate termination of the litigation.

ENTER:

/s/ J. S. PERRY

Judge

Dated: December 6, 1972.

IN THE UNITED STATES COURT OF APPEALS.
* * (Title Omitted in Printing) * *

PETITION FOR PERMISSION TO APPEAL.

To the Honorable Judges of the United States Court of Appeals for the Seventh Circuit:

Plaintiffs Carole Anderson Romasanta and Brenda Bailes Altman, on behalf of themselves and all others similarly situated, respectfully petition this Court, pursuant to the provisions of 28 U. S. C. § 1292(b) and Rule 5, Federal Rules of Appellate Procedure, for permission to appeal from an Order of the United States District Court for the Northern District of Illinois, Eastern Division, and in support thereof respectfully represent:

1. This petition seeks permission to appeal from a Memorandum and Order entered on December 6, 1972, a copy of which is attached hereto. The Memorandum and Order struck the class action allegations of the Complaint and directed that the action proceed as an individual action. The Memorandum and Order further denied the motion of twelve Plaintiff-Intervenors to join the suit as Parties-Plaintiff.

2. The District Court was of the opinion that its Order involved controlling questions of law as to which there is substantial ground for difference of opinion and that an immediate appeal from its Order may materially advance the ultimate termination of the litigation, and has so certified. (Memo, pp. 10-11.) Such a statement is a prerequisite to the filing of a petition for permission to appeal in this Court under 28 U. S. C. § 1292(b).

STATEMENT OF FACTS.

1. Plaintiffs, and the class they seek to represent, are former Stewardesses employed by Defendant, United Air Lines, Inc., whose jobs were terminated by reason of their marriage in conformance with Defendant's policy which required that Stewardesses be unmarried. Their Complaint alleges that their job terminations constituted unlawful discrimination because of sex, in violation of Title VII of the Civil Rights Act of 1964 (42 U. S. C. § 2000(e)). The action was framed as a class action to secure relief for the class of Stewardesses similarly situated with the Plaintiff in *Sprogis* v. *United Air Lines, Inc.*, 444 F. 2d 1194 (7th Cir. 1971), which had not been pleaded initially as a class action. The present case was held in abeyance pending disposition of *Sprogis* on appeal from the District Court's Order granting summary judgment for the Plaintiff. This Court, on June 16, 1971, affirmed the decree of the District Court in *Sprogis*, finding that Defendant's enforcement of its no-marriage policy for stewardesses discriminated on the basis of sex (444 F. 2d 1194). On December 14, 1971 the United States Supreme Court denied the Defendant's petition for writ of certiorari (404 U. S. 991).

2. Upon this Court's remand of *Sprogis* to the District Court, the Plaintiff in *Sprogis*, on February 15, 1972, filed a memorandum on the scope of the class entitled to relief. The question of extending relief in *Sprogis* to a class had been left open in the District Court's decree and the District Court's power to consider such action had been affirmed by this Court in its decision. Plaintiff urged that the relief afforded to the individual plaintiff in *Sprogis* should be made available to the following class of persons:

Class I:

> All persons employed by United Air Lines, Inc. as stewardesses who were discharged by United pursuant to its no-marriage policy between the dates of July 2, 1965 and November 7, 1968.

Class II:

> All persons employed by United Air Lines, Inc. as stewardesses who resigned from their employment upon their marriage between July 12, 1965 and November 7, 1968 as required by United's no-marriage

policy, and who complained against United's no-marriage rule by filing grievances under a collective bargaining agreement between United and the Air Line Pilots Association, or by filing charges under Title VII of the 1964 Act or under other state or federal laws, regulations, or executive orders banning discrimination in employment because of sex.

The plaintiffs in both cases also moved to consolidate *Sprogis* and *Romasanta*. On June 14, 1972 the District Court denied the Motions to convert *Sprogis* into a class action after judgment on the merits when it had not been pleaded as a class action, and refused to consolidate *Sprogis* and *Romasanta*.

3. Plaintiffs then commenced discovery proceedings in *Romasanta*, which, of course, had been pleaded initially as a class action, in an endeavor to determine the identity and number of persons in the class of Plaintiffs by serving a notice of deposition and a request for production of documents on Defendant in June, 1972. On June 22, 1972 Defendant filed a motion to strike the class action allegations of the *Romasanta* complaint, which the District Court took under advisement on July 28, 1972, pending discovery by Plaintiffs as to the characteristics and identity of the class. Plaintiffs had argued that they were unable adequately to respond to Defendant's motion to strike without further factual information about the Stewardesses who might be members of the class, and, further, that the District Court could not properly rule on the Defendant's motion without such additional factual information. After examining a computer tabulation of all Stewardesses who resigned or were discharged by Defendant from 1966 to the present, made available by Defendant, Plaintiffs determined that there is very likely a substantially greater number of Stewardesses who were discharged due to marriage than had previously been contemplated, possibly over one hundred. Plaintiffs then sought to examine Defendant's files on each Stewardess who appeared likely to have been discharged due to marriage. This discovery was effectively terminated on

September 11, 1972 when the District Court announced that it was prepared to grant Defendant's motion to strike the class action allegations of the complaint.

4. At a hearing on September 11, 1972, in the absence of any evidentiary hearing or argument or briefs counsel, the District Court stated that it was prepared to grant Defendant's motion to strike the class action allegations of the complaint and would allow only those Stewardesses who formally protested their job terminations to enter the suit by joinder as plaintiffs. Defendant submitted a proposed order embodying this ruling. Attached to this proposed order were two affidavits executed by officers of Defendant containing a wide variety of factual assertions purporting to support findings of fact contained in Defendant's proposed order. Plaintiffs objected to the proposed order and objected to the submission of these affidavits since plaintiffs had no meaningful opportunity, without additional discovery, to counter these affidavits and had no opportunity to cross-examine Defendant's witnesses concerning virtually every disputed issue in the case. Relying on the District Court's oral ruling, counsel for Plaintiffs submitted a motion to intervene on behalf of twenty-four Stewardesses who had protested their job terminations.

5. On December 6, 1972 the District Court entered its formal Order from which the Plaintiffs are hereby seeking permission to appeal, striking the class action allegations of the complaint and denying the motion to intervene as to twelve of the Stewardesses who had sought to enter the case by this means. The District Court's Order and Memorandum limited the class of Stewardesses eligible to pursue a Title VII claim to those who formally protested their terminations by filing a valid grievance under the governing collective bargaining agreement or a valid complaint with the Equal Employment Opportunity Commission or any appropriate state agency, even where such Stewardesses had been fired outright (Memo, p. 4).

The District Court thus accepted Defendant's factual assertion that any Stewardess who did not protest her termination due to

marriage had no interest in further employment and thus should not be allowed the opportunity to seek any remedy under Title VII (Memo, p. 4). The Court's requirement of a protest of the terminations, in other words, is not based upon any concept of necessity for exhausting administrative remedies; rather, protest is viewed as necessary because, according to Defendant and the District Court, one must make some outcry to show a continuing interest in one's job, despite the fact that the termination was concededly a violation of Title VII and other persons in the class have fulfilled the statutory prerequisites for bringing a Title VII action. Having thus excluded the bulk of the Stewardesses discharged by reason of Defendant's no-marriage policy, the District Court found the class of plaintiffs who protested their terminations did not meet the "numerosity" requirement of Rule 23(a) of the Federal Rules of Civil Procedure and thus dismissed the class action (Memo, p. 9).

The District Court's Order further narrowed the group of Stewardesses eligible to participate in the action (even by joinder as plaintiffs) by excluding any Stewardess who had previously accepted an offer of reinstatement by the Defendant which contained a statement requiring the relinquishment of pending claims as a condition of acceptance. The District Court found, in the absence of any hearing or evidence on the point, that, in accepting this conditional offer of reinstatement, each Stewardess knowingly and intentionally waived all rights to pursue any remedy under Title VII.

The effect of the District Court's ruling is to allow those individuals who protested their terminations and who rejected Defendant's first conditional offer of reinstatement, made on November 14, 1968, and who then accepted Defendant's second unconditional offer of reinstatement made on January 3, 1969 or who were erroneously omitted from Defendant's list of thirty protesting Stewardesses to participate in this lawsuit.

The District Court's Order and Memorandum was entered before Plaintiffs had a chance to complete sufficient discovery on

the number of persons in the class and in the absence of an evidentiary hearing on any of the factual determinations made in the District Court's Memorandum. Included in the District Court's Memorandum are factual findings based on affidavits submitted by Defendant which, in the absence of the right to cross-examine Defendant's affiants at a hearing, and in the absence of any meaningful discovery, Plaintiffs had no opportunity to counter.

The Controlling Questions of Law

1. Whether persons whose employment has been terminated because of their sex, a reason proscribed by Title VII of the Civil Rights Act of 1964, are required to protest their terminations by filing grievances or charges in order to become entitled to relief in a class action under Title VII. Whether, in other words, there is a requirement in Title VII that one must take such steps simply to show an interest in continued employment in order to be entitled to relief in a class suit.

2. The District Court found that every Stewardess whose employment was terminated due to marriage but who did not formally protest this termination was not truly interested in further employment and thus was ineligible to pursue a claim of employment discrimination under Title VII. Did the District Court err in making this finding in the absence of an evidentiary hearing, thereby denying Plaintiffs the right to be heard and to offer evidence showing that many, if not all, Stewardesses who did not protest their terminations due to marriage were truly interested in regaining their employment?

3. Is acceptance of an offer of reinstatement conditioned on the abandonment of pending claims necessarily effective to waive all rights under Title VII of the 1964 Civil Rights Act?

4. The District Court found that every Stewardess who accepted Defendant's conditional offer of reinstatement accepted reinstatement in full satisfaction of her claims and thus knowingly and intentionally waived her rights to pursue any claims

under Title VII of the 1964 Civil Rights Act. Did the District Court err in making this finding in the absence of an evidentiary hearing, thereby denying Plaintiffs their right to be heard and to present evidence showing that some, if not all, Stewardesses who accepted Defendant's offer of reinstatement were unaware of the remedies available under Title VII of the Civil Rights Act or were unaware of the effect of accepting this offer of reinstatement and thus did not knowingly and intentionally waive their right to pursue their claims under Title VII of the 1964 Civil Rights Act?

5. The District Court struck the class action allegations of the complaint for the reason that the class of plaintiffs does not meet the "numerosity" requirement of Rule 23(a) of the Federal Rules of Civil Procedure. Did the District Court err in striking the class action in absence of an evidentiary hearing preceded by an adequate opportunity for discovery of the extent, nature and characteristics of the class?

Reasons Why a Substantial Basis Exists for a Difference of Opinion on the Controlling Questions of Law.

1. This Court and numerous other courts have rejected the notion that relief under Title VII of the 1964 Civil Rights Act is available only to parties who have themselves filed charges or otherwise protested. Contrary to the conclusion of the District Court, the law is clear that a representative plaintiff who has exhausted his administrative remedies by filing charges with the Equal Employment Opportunities Commission may bring a class action on behalf of others subjected to the same discrimination but who did not themselves file EEOC charges or otherwise protest. *Bowe* v. *Colgate-Palmolive Co.*, 416 F. 2d 711 (7th Cir. 1969); *Butler* v. *Local 4 and Local 269, Laborers Int'l. Union*, 308 F. Supp. 523 (N. D. Ill. 1969); *Local 186, Int'l. Pulp Sulphite & Paper Mill Workers* v. *Minn. Mining & Mfg. Co.*, 304 F. Supp. 1284 (N. D. Ind. 1969); *Oatis* v. *Crown Zellerbach Corp.*, 398 F. 2d 496 (5th Cir. 1968);

Jenkins v. *United Gas Corp.*, 400 F. 2d 28 (5th Cir. 1969). Once a single individual has exhausted the administrative requirements all other persons similarly situated are entitled to seek relief as members of a class represented by the exhausting person in his or her action, without the necessity of their doing *anything* on their part. The District Court's ruling misconstrues the requirements of Title VII and flies in the face of clear precedent.

2. The District Court's ruling that acceptance of a private agreement requiring the relinquishment of any claim is effective to waive all rights under Title VII of the 1964 Civil Rights Act is contrary to the policy considerations underlying the prohibition of discrimination in that Act as enunciated by this Court and other Courts.

Actions brought pursuant to Title VII are suits to vindicate the public's interest in eliminating proscribed discriminatory practices. This Court, in *Bowe* v. *Colgate-Palmolive Co.*, 416 F. 2d 711, 719 (7th Cir. 1969) stated:

> In *Newman* v. *Piggie Park Enterprises, Inc.*, 390 U. S. 400, 401-402, 88 S. Ct. 964, 19 L. Ed. 2d 1263 (1968), the court held that since vindication of the public interest is dependent upon private suits, the suits are private in form only and a plaintiff who obtains an injunction does so "as a 'private attorney general', vindicating a policy that Congress considered of the highest priority."

This Court also noted in *Bowe* that in Title VII actions the trial court bears a special responsibility in the public interest to resolve the dispute by determining the facts (416 F. 2d at 715). See also *Oatis* v. *Crown Zellerbach Corp.*, 398 F. 2d 496 (5th Cir. 1968); *Jenkins* v. *United Gas Corp.*, 400 F. 2d 28 (5th Cir. 1968); *Johnson* v. *Georgia Highway Express, Inc.*, 417 F. 2d 1122 (5th Cir. 1969). The District Court's Order upholding private agreements conditioned on the waiver of any claim and thereby precluding any possibility of suit under Title VII of the 1964 Civil Rights Act is directly contrary to this established policy.

Moreover, by analogizing to identical situations in the field of labor relations which this Court found to be not merely compelling, but conclusive in *Bowe, supra,* at 714, the District Court's ruling upholding the private settlement agreements in this case must be reversed. In labor contexts, it is well established that private settlements of unfair labor practices, including a union's waiver of back pay for its members, does not prevent the National Labor Relations Board from retaining jurisdiction and entering a remedial order if such order is deemed necessary to effectuate the policies of the National Labor Relations Act. *N. L. R. B.* v. *E. A. Laboratories,* F. 2d 885 (2nd Cir. 1951) cert. den. 342 U. S. 871; *Safeway Stores, Inc.,* 148 NLRB 660 (1964); *Monroe Feed Stores,* 122 NLRB 1479 (1959); *Aacon Contracting Company,* 127 NLRB 1250 (1960).

3. Elementary and fundamental considerations of procedural due process mandate the opportunity to be heard, to present evidence, and to cross-examine opposing witnesses on disputed issues of fact.

The District Court in this case issued its Memorandum and Order in the absence of any evidentiary hearing. That Memorandum and Order contain numerous factual findings on which Plaintiffs had no opportunity to present evidence. The District Court accepted factual assertions made by way of Defendant's affidavits which factual assertions Plaintiffs had no meaningful way to counter or to discredit.

In the absence of a hearing, the District Court found that Stewardesses who did not formally protest their terminations due to marriage were not interested in securing reinstatement. This factual determination was reached by the District Court by accepting Defendant's assertion made in an *ex parte* affidavit, without affording Plaintiffs a meaningful opportunity to present evidence or to cross-examine Defendant's affiants.

Without any factual basis, by affidavit or otherwise, the District Court further found that any Stewardess who accepted

an offer of reinstatement conditioned on the abandonment of claims in fact knowingly and intentionally waived all rights to pursue any Title VII claim. Clearly, to determine the fact of waiver by individuals of substantial statutory rights, there must be evidence showing an intelligent and intentional act and there must be evidence showing that the individual had an understanding that there existed a right which is the subject of choice. *Johnson* v. *Zerbst,* 304 U. S. 458 (1938); *United States ex rel. Bolognese* v. *Brierly,* 412 F. 2d 193 (3rd Cir. 1969), cert. den. 397 U. S. 942; *United States* v. *Escandar,* 465 F. 2d 438 (5th Cir. 1972).

The District Court struck the class action allegations of the complaint without affording Plaintiffs an adequate opportunity for discovery and without any evidentiary hearing. In such a posture, the District Court erred in deciding the issue of the propriety of the class action. *Herbst* v. *Able,* 278 F. Supp. 664 (S. D. N. Y. 1967), 45 F. R. D. 451 (1968); *Burstein* v. *Slote,* 12 F. R. Serv. 2d 23c. 1 case 2 (S. D. N. Y. 1968), cf. *Tolbert* v. *Western Electric Co.,* 56 F. R. D. 108 (N. D. Ga. 1972).

Reasons Why an Immediate Appeal May Materially Advance the Termination of the Litigation.

The District Court's Order and Memorandum substantially alters the nature of this suit. Instead of a class action composed of possibly well over one hundred members, the District Court's Order converts the suit to an individual action on behalf of fourteen individuals. The District Court's Order precludes the bulk of Stewardesses discharged by reason of their marriage from seeking reinstatement and back pay. If this appeal is accepted and if the District Court's Order is reversed, the final stage of this lawsuit, the determination of the damages owing to Stewardesses now deemed to be ineligible to recover, would be materially advanced. The alternative, if this appeal is not permitted until the final judgment in the District Court, would

not only delay the final termination of the case but also would result in the duplication of damage award proceedings, since the damages owing to the fourteen persons now joined in the suit would then have been determined. Moreover, delay imposes an unnecessary burden on Stewardesses—all of whom were discharged due to marriage prior to November 1968; the longer the delay, the less likely that an individual will be in a position to disrupt her established way of living in order to accept reinstatement as a Stewardess. For these reasons, an immediate appeal of the issues decided in the District Court's Order and Memorandum may materially advance the termination of the litigation.

Wherefore, Petitioners respectfully pray that this petition be granted and that they be permitted to appeal from the District Court's Order and Memorandum under the provisions of 28 U. S. C. § 1292(b).

RICHARD F. WATT
IRVING M. KING
PEGGY A. HILLMAN
Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT

* * (Title Omitted in Printing) * *

ANSWER TO INTERVENORS' COMPLAINT

Now comes defendant United Air Lines, Inc., by its attorneys, and for its Answer to the Intervenors' Complaint states and alleges as follows:

> "1. This action arises under Title VII of the Civil Rights Act of 1962, 42 U. S. C. Section 2000e *et seq.* Jurisdiction of this Court is invoked pursuant to such Act, particularly Title VII, Section 706(f) 42 U. S. C. Sec. 2000f."

1. Defendant admits the allegations of paragraph 1 but denies any implication that defendant has violated that Act.

> "2. Each Plaintiff-Intervenor is a person of the female sex who was employed by the Defendant as a flight cabin attendant, or airline stewardess, until her position was terminated by the Defendant. Each Plaintiff-Intervenor took actions to protest this termination."

2. Defendant admits the allegations of paragraph 2 that plaintiffs-intervenors are females who were employed by defendant as stewardesses but denies that all plaintiffs-intervenors were terminated and that each plaintiff-intervenor took action to protest the alleged termination.

> "c. Plaintiff-Intervenor, Sandra Moore Ballinger, commenced employment as a stewardess with Defendant on or about April 19, 1962. Her employment was terminated on or about January 17, 1967. She protested this termination by filing a grievance pursuant to the provisions of the collective bargaining agreement between the Air Line Pilots Association, of which she was a member, and Defendant."

a. Defendant admits the allegations in paragraph 2c. Further answering said paragraph, defendant states that Sandra Moore Ballinger was offered and accepted reinstatement effec-

tive February 1, 1969 but then chose not to return to work as a stewardess.

> "d. Plaintiff Intervenor, Sarah A. Boling, commenced employment as a stewardess with Defendant on or about March 24, 1961. Her employment was terminated on or about February 17, 1966. She protested this termination by filing a grievance pursuant to the provisions of the collective bargaining agreement between the Air Line Pilots Association, of which she was a member, and Defendant."

b. Defendant admits the allegations in paragraph 2d. Further answering said paragraph, defendant states that Sarah A. Boling was offered and accepted reinstatement effective February 1, 1969 but then chose not to return to work as a stewardess.

> "f. Plaintiff-Intervenor, Carol Elaine Brackle, commenced employment as a stewardess with Defendant on or about June 11, 1962. Her employment was terminated on or about November 10, 1966. She protested this termination by filing a grievance pursuant to the provisions of the collective bargaining agreement between the Air Lines Pilots Association, of which she was a member, and Defendant."

c. Defendant admits the allegations in paragraph 2f.

> "g. Plaintiff-Intervenor, Marlene Riehl Carney, commenced employment as a stewardess with Defendant on or about May 20, 1964. Her employment was terminated on or about October 18, 1966. She protested this termination by filing a grievance pursuant to the provisions of the collective bargaining agreement between the Air Line Pilots Association, of which she was a member, and Defendant, and by filing charges with the Equal Employment Opportunity Commission against Defendant, in accordance with the provisions of Title VII."

d. Defendant admits the allegations in paragraph 2g except that it is without knowledge or information sufficient to form a belief as to the truth of the allegation that Marlene Riehl

Carney protested termination by filing charges with the Equal Employment Opportunity Commission against defendant, in accordance with the provisions of Title VII. Further answering said paragraph, defendant states that Marlene Riehl Carney abandoned her grievance by failing to follow the grievance procedures established in the collective bargaining agreement between the Air Line Pilots Association and defendant.

> "i. Plaintiff-Intervenor, Catherine Reese Colvin, commenced employment as a stewardess with Defendant on or about April 18, 1963. Her employment was terminated on or about August 8, 1966. She protested this termination by filing a grievance pursuant to the provisions of the collective bargaining agreement between the Air Line Pilots Association, of which she was a member, and Defendant."

e. Defendant admits the allegations in paragraph 2i. Further answering said paragraph, defendant states that Catherine Reese Colven was offered and accepted reinstatement effective February 1, 1969.

> "k. Plaintiff-Intervenor, Susan Fusco, commenced employment as a stewardess with Defendant on or about August 15, 1956. Her employment was terminated on or about October 15, 1966. She protested this termination by filing a grievance pursuant to the provisions of the collective bargaining agreement between the Air Line Pilots Association, of which she was a member, and Defendant and by calling the Equal Employment Opportunities Commission."

g. Defendant admits the allegations in paragraph 2k, except that it is without knowledge or information sufficient to form a belief as to the truth of the allegation that she called the Equal Employment Opportunity Commission. Further answering said paragraph, defendant states that Susan Fusco was offered and accepted reinstatement effective February 1, 1969, that she returned to work as a stewardess and that she resigned on September 12, 1969.

> "m. Plaintiff-Intervenor, Joanne Fitzgerald Hamersley, commenced employment as a stewardess with Defendant

on or about October 13, 1960. Her employment was terminated on or about December 22, 1967. She protested this termination by filing charges with the Equal Employment Opportunity Commission against Defendant in accordance with the provisions of Title VII."

h. Defendant denies the allegations in paragraph 2m except that defendant admits that Joanne Fitzgerald Hamersley commenced employment as a stewardess with defendant on or about October 13, 1960. Further answering said paragraph, defendant states that Joanne Fitzgerald Hamersley resigned on December 23, 1967.

"q. Plaintiff-Intervenor, Judith Hopkins Pendleton, commenced employment as a stewardess with Defendant on or about March 8, 1962. Her employment was terminated on or about January 29, 1967. She protested this termination by filing a grievance pursuant to the provisions of the collective bargaining agreement between the Air Line Pilots Association, of which she was a member, and Defendant."

i. Defendant admits the allegations in paragraph 2q. Further answering said paragraph, defendant states that Judith Hopkins Pendleton was offered and accepted reinstatement effective February 1, 1969, that she returned to work as a stewardess and that she resigned on October 6, 1969.

"r. Plaintiff-Intervenor, Lynn Mason Raymond, commenced employment as a stewardess with Defendant on or about June 9, 1960. Her employment was terminated on or about June 14, 1966. She protested this termination by filing charges with the Equal Employment Opportunity Commission against Defendant in accordance with the provisions of Title VII."

j. Defendant denies the allegations in paragraph 2r except that it admits that Lynn Mason Raymond commenced employment as a stewardess with defendant on or about June 9, 1960. Further answering said paragraph, defendant states that Lynn Mason Raymond was terminated on or about June 4, 1966 and that she did not protest this termination in any manner.

"u. Plaintiff-Intervenor, Rita Gardino Trubshaw, commenced employment as a stewardess with Defendant on or about August 18, 1965. Her employment was terminated on or about July 9, 1968. She protested this termination by filing a grievance pursuant to the provisions of the collective bargaining agreement between the Air Line Pilots Association, of which she was a member, and Defendant."

k. Defendant admits the allegations in paragraph 2u.

"v. Plaintiff-Intervenor, Terry Baker Van Horn, commenced employment as a stewardess with Defendant on or about June 6, 1963. Her employment was terminated on or about January 12, 1966. She protested this termination by filing a grievance pursuant to the provisions of the collective bargaining agreement between the Air Line Pilots Association, of which she was a member, and Defendant, and by filing charges with the Equal Employment Opportunity Commission against Defendant in accordance with the provisions of Title VII."

l. Defendant admits the allegations in paragraph 2v.

"x. Plaintiff-Intervenor, Mary O'Connor Whitmore, commenced employment as a stewardess with Defendant on or about July 11, 1957. Her employment was terminated on or about January 1, 1966. She protested this termination by filing a grievance pursuant to the provisions of the collective bargaining agreement between the Air Line Pilots Association, of which she was a member, and Defendant, and by filing charges with the Equal Employment Opportunity Commission against Defendant in accordance with the provisions of Title VII."

m. Defendant admits the allegations in paragraph 2x. Further answering said paragraph, defendant states that Mary O'Connor Whitmore was offered and accepted reinstatement effective January 26, 1969, that she returned to work as a stewardess and that she resigned on July 30, 1970.

"3. Defendant, United Air Lines, Inc., is a corporation organized and existing by virtue of the laws of the State of Delaware. Its principal office is located in Elk Grove Village, Cook County, State of Illinois, which is within the Northern District of Illinois."

3. Defendant admits the allegations of paragraph 3.

"4. Title VII of the Civil Rights Act of 1964 makes it an unlawful employment practice for an employer, among other practices, to fail or refuse to hire any individual or otherwise discriminate against any individual with respect to compensation, terms, conditions or privileges of employment because of sex, except where sex is a bona fide occupational qualification reasonably necessary to the normal operation of that particular business or enterprise."

4. Paragraph 4 paraphrases provisions of Title VII of the Civil Rights Act of 1964 and requires no answer.

"5. At all relevant times the Defendant maintained in effect a rule, regulation or policy, pertaining solely to females employed as stewardesses, requiring that stewardesses be unmarried when first employed and that they thereafter remain unmarried while so employed. The policy of Defendant, as in effect at the time of Plaintiff-Intervenors' terminations, calls for the termination of the employment of any stewardess who married."

5. Defendant admits the allegations of paragraph 5 except that it denies any implication that such policy is presently in effect and any implication that all the plaintiffs-intervenors were terminated pursuant to such policy.

"6. Defendant hires both male and female employees. There is no rule, regulation or policy of the nature described in Paragraph 5 above which is or has been maintained or enforced against male employees of the Defendant. Pursuant to the above rule or regulation Defendant has terminated the employment of female stewardesses immediately upon notification of the marriage of such employee, but no action is or has been taken against male employees upon marriage, and male employees are permitted to continue employment of Plaintiff-Intervenors as stewardesses pursuant to the above-described policy or rule and in violation of Title VII of the Civil Rights Act of 1964, for the sole reason that each is a female and became married while in the employ of Defendant in the capacity of stewardess."

6. Defendant admits the allegations of paragraph 6 that it hires both male and female employees; that there is no rule, regulation or policy as described in paragraph 5 of the Complaint which has been maintained or enforced against male employees; that pursuant to such policy defendant has dismissed stewardesses immediately upon notification of marriage and that no such action has been taken against male employees upon marriage, and male employees are permitted to continue employment without regard to marital status. Defendant denies the allegation of paragraph 6 that the plaintiffs-intervenors were terminated in violation of Title VII of the Civil Rights Act of 1964. Further answering said paragraph, defendant states that such policy has never been in effect with respect to female employees other than stewardesses, and that such policy is not currently in effect with respect to stewardesses.

"7. Defendant has committed and is now intentionally committing unlawful employment practices with respect to the Plaintiff-Intervenors by discriminating against them because of their sex in summarily and arbitrarily terminating their employment as stewardesses because of their marriage."

7. Defendant denies the allegations of paragraph 7.

"8. The practices and actions of the Defendant described in Paragraphs 5, 6 and 7 above constitute unlawful employment practices in violation of Title VII, Section 2000e *et seq.*, of the Civil Rights Act of 1964. As a result thereof, the Plaintiff-Intervenors have been subjected to discrimination because of their sex with respect to conditions and privileges of employment all in violation of said statute. Plaintiff-Intervenors have been and are continuing to be wrongfully deprived of employment and substantial compensation as a direct and proximate result of the unlawful employment practices hereinabove described."

8. Defendant denies the allegations of paragraph 8.

"9. Plaintiff-Intervenors have no other remedy at law, and this suit is their only means of securing adequate relief."

9. The allegation of paragraph 9 is conclusory and requires no answer.

First Affirmative Defense.

1. In the alternative, even if defendant's long-standing policy of requiring the termination of stewardesses' employment upon marriage is in violation of Section 703(a) of the Civil Rights Act of 1964 (78 Stat. 265, 42 U. S. C. § 2000e-2), plaintiffs-intervenors Sandra Moore Ballinger, Sarah A. Boling, Susan Fusco, Judith Hopkins Pendleton and Mary O'Connor Whitmore accepted reinstatement and then either chose not to return or returned to work and then resigned as more fully alleged in paragraphs 2a, b, g, i and m of this answer and, therefore, are not entitled to be reinstated as stewardesses, are not entitled to have all their previous employment privileges and opportunities restored, and are not entitled to any other form of injunctive relief.

Second Affirmative Defense.

1. In the alternative, even if defendant's former policy of requiring the termination of stewardesses' employment upon marriage is in violation of Section 703(a) of the Civil Rights Act of 1964 (78 Stat. 265, 42 U. S. C. § 2000e-2), plaintiff-intervenor Joanne Fitzgerald Hamersley is not entitled to any relief for the reason that she was not terminated pursuant to such policy but rather resigned and did not protest such policy in any manner.

Third Affirmative Defense.

1. In the alternative, even if defendant's former policy of requiring the termination of stewardesses' employment upon marriage is in violation of Section 703(a) of the Civil Rights Act of 1964 (78 Stat. 265, 42 U. S. C. § 2000e-2), plaintiff-intervenor Lynn Mason Raymond is not entitled to any relief for the reason that she did not protest her termination in any manner.

WHEREFORE, defendant prays that the Complaint be dismissed and it be awarded its costs.

UNITED AIR LINES, INC.,
By STUART BERNSTEIN,
JAMES W. GLADDEN, JR.,
Its Attorneys.

UNITED STATES COURT OF APPEALS.
For the Seventh Circuit
Chicago, Illinois 60604

December 27, 1972.

Before

HON. LUTHER M. SWYGERT, *Chief Judge*
HON. WILBUR F. PELL, JR., *Circuit Judge*
HON. ROBERT A. SPRECHER, *Circuit Judge*

CAROLE ANDERSON ROMASANTA and BRENDA BAILES ALTMAN, on behalf of themselves and all others similarly situated,
Plaintiffs,

No. 72-8117 *Misc. vs.*

UNITED AIR LINES, INC., a corporation,
Defendant.

From the United States District Court for the Northern District of Illinois, Eastern Division.

This matter is before the Court on the petition of Plaintiffs for permission to appeal from an order of the U. S. District Court for the Northern District of Illinois, Eastern Division, in No. 70 C 1157, pursuant to the provisions of 28 U. S. C. § 1292(b) and Rule 5 of the Federal Rules of Appellate Procedure, and on the response of Defendant to said petition. On consideration whereof,

IT IS ORDERED that said petition for permission to appeal be and the same is hereby denied.

IN THE UNITED STATES DISTRICT COURT.
* * (Title Omitted in Printing) * *

PLAINTIFFS' MOTION FOR PARTIAL SUMMARY JUDGMENT.

Plaintiffs Rita Ann King, Sandra Beery Hoiles, Carole Elaine Brackle, Sarah Ann Boling and Lynn Mason Raymond, by and through their attorneys, move the Court, pursuant to Rule 56 of the Federal Rules of Civil Procedure, to enter partial summary judgment in their favor by ordering that they be reinstated to their former positions as Stewardesses in the employ of Defendant with all rights of seniority and longevity restored, and in support of their motion state as follows:

1. Defendant's action in terminating the employment of each of the five Plaintiffs herein because they were married constituted unlawful employment discrimination on grounds of sex in violation of Title VII of the Civil Rights Act of 1964 (42 U. S. C. § 2000e), as determined by this Court in the companion case of *Sprogis* v. *United Air Lines*, 308 F. Supp. 959 (N. D. Ill. 1970), aff'd. 444 F. 2d 1194 (7th Cir. 1971), cert. den. 404 U. S. 991 (1972).

2. One of the remedies to which each of the five Plaintiffs is entitled by reason of this discrimination is reinstatement to her position as a Stewardess in the employ of Defendant with all her rights of seniority and longevity restored (42 U. S. C. § 2000e-5(g)).

3. There is no genuine issue of material fact with respect to any of the issues raised by this motion.

This motion is based on the facts set forth in the record and in the depositions of each of the five Plaintiffs which have been filed with the Court.

The attached Memorandum is submitted in support of the foregoing Motion.

WHEREFORE, each of the Plaintiffs prays that partial summary judgment be entered in her favor ordering that Defendant reinstate her to employment as a Stewardess with all rights of seniority and longevity restored.

Respectfully submitted,

RICHARD F. WATT,
IRVING M. KING,
PEGGY A. HILLMAN,
By /s/ PEGGY A. HILLMAN,
Attorneys for Plaintiffs.

IN THE UNITED STATES DISTRICT COURT.
* * (Title Omitted in Printing) * *

JUDGMENT.

This matter coming before the Court upon the motion of plaintiff Rita Ann King for partial summary judgment in her favor seeking reinstatement to her former position as a stewardess in the employ of defendant United Air Lines, Inc., with all rights of seniority and longevity restored, and, upon consideration of the memorandum filed in support of said motion and the stated position of defendant United Air Lines, Inc. not to oppose said motion,

IT IS HEREBY ORDERED that plaintiff Rita Ann King's motion for partial summary judgment is hereby granted and defendant United Air Lines, Inc. is ordered to restore plaintiff Rita Ann King to employment as a stewardess with all her rights of seniority and longevity intact and unimpaired, precisely as they would have accrued but for her discharge on July 9, 1968. This Court retains jurisdiction for the purpose of enforcing this Order and for the purpose of determining any amount of damages owing to plaintiff King.

ENTER:

/s/ J. S. PERRY.

Dated: June 27, 1974.

THE UNITED STATES DISTRICT COURT.

* * (Title Omitted in Printing) * *

MOTION FOR SUMMARY JUDGMENT.

Plaintiffs Brenda Bailes Altman, Carol Barounes, Marlene Riehl Carney, Susan Fusco, Rita Ann King, Judith Hopkins Pendleton, Terry Baker Van Horn and Mary O'Connor Whitmore, by and through their attorneys, move this Court, pursuant to Rule 56 of the Federal Rules of Civil Procedure, to enter summary judgment in their favor, ordering, adjudging and decreeing as follows:

1. That the rule, regulation or policy of Defendant, United Air Lines, Inc., pursuant to which it discharged all of said plaintiffs is unlawful as in violation of Title VII of the Civil Rights Act of 1964.

2. That, inasmuch as all of said plaintiffs have been offered reinstatement to their positions as stewardesses, each plaintiff is entitled to be compensated for her loss of earnings from the time of her illegal discharge until the date of her reinstatement.

3. That this Court retain jurisdiction for the purpose of enforcing said judgment and of determining the precise amount of compensation to which each plaintiff is entitled.

4. That this Court appoint David J. Shipman as Special Master in Chancery to take testimony and to make a written recommendation for a money decree owing to each of said plaintiffs.

As grounds for this motion, plaintiffs assert that there is no genuine issue as to any material fact which needs to be tried and that plaintiffs are entitled to judgment as prayed for above as a matter of law. In support of their motion, plaintiffs state as follows:

1. Defendant's action in terminating the employment of each of the plaintiffs herein because they were married constituted unlawful employment discrimination on grounds of sex in violation of Title VII of the Civil Rights Act of 1964 (42 U. S. C. § 2000e), as determined by this Court in the companion case of *Sprogis* v. *United Air Lines, Inc.*, 308 F. Supp. 959 (N. D. Ill. 1970), aff'd. 444 F. 2d 1194 (7th Cir. 1971), cert. den. 404 U. S. 991 (1972).

2. One of the remedies to which each plaintiff is entitled by reason of this discrimination is compensation for earnings lost from the time of each illegal discharge until the date of reinstatement (42 U. S. C. § 2000e-5(g)).

This motion is based on the facts set forth in the record and in the deposition of each of the plaintiffs (with the exception of plaintiff Barounes) which have been filed with the Court.

WHEREFORE, each of the plaintiffs pray that summary judgment be entered in her favor in accordance with this motion.

RICHARD F. WATT
IRVING M. KING
PEGGY A. HILLMAN
Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT.

* * (Title Omitted in Printing) * *

DECREE.

This matter coming before the Court on the motion for summary judgment filed on behalf of Plaintiffs Brenda Bailes Altman, Carol Barounes, Marlene Riehl Carney, Susan Fusco, Rita Ann King, Judith Hopkins Pendleton, Terry Baker Van Horn and Mary O'Connor Whitmore and the Court having considered all matters of record and being fully advised in the premises,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

1. Plaintiffs' motion for summary judgment is hereby granted;

2. The discharges of all said Plaintiffs by the Defendant pursuant to a policy requiring that all Stewardesses be unmarried when hired and remain unmarried while so employed constitute unlawful sex discrimination as in violation of Title VII of the Civil Rights Act of 1964 (42 U. S. C. § 2000e, et seq.).

3. Inasmuch as all of said Plaintiffs have been offered reinstatement to their positions as stewardesses, each Plaintiff is entitled to be compensated for her loss of earnings pursuant to the provisions of Title VII of the Civil Rights Act of 1964.

4. Since the record does not disclose the amount of compensation lost by said Plaintiffs, the Court should and hereby does retain jurisdiction for the purpose of enforcing this Order and for the purpose of determining by appropriate proceedings, the precise amount of compensation to which each Plaintiff is entitled.

5. The Court hereby appoints David J. Shipman as Special Master in Chancery to take testimony and make a recommendation for a money decree owing to each of said plaintiffs. Said

Special Master's fees shall be fixed by the Court and said fees and his costs shall be assessed as costs herein. The Court does now order that said Special Master in Chancery shall have the power to administer oaths, issue subpoenas duces tecum and shall have the power to order documents produced by either of the parties. The Court further orders that said Special Master shall conduct and supervise all discovery proceedings, shall rule upon all motions concerning discovery, and shall order the taking of depositions or quashing of notices and rule on other routine and contested matters concerning discovery. The Court does not intend that said Special Master in Chancery shall be consulted on the routine taking of depositions, where there is no controversy between the parties. Said Special Master shall report progress herein to the Court within ninety (90) days after this judgment order becomes final by virtue of no appeal being taken within the time for appeal or after a mandate of affirmance in the event of appeal.

6. The Court also retains jurisdiction for the purpose of hearing applications for attorneys' fees and any issues as to costs.

ENTER:

/s/ J. S. PERRY

Dated: Chicago, Illinois, July 2, 1974.

UNITED STATES DISTRICT COURT.

* * (Title Omitted in Printing) * *

ORDER.

This matter coming before the Court for the entry of a final order and the Court being fully advised of all relevant circumstances, the Court finds as follows:

A. This lawsuit was filed in 1970 as a class action on behalf of all United Air Lines, Inc. stewardesses who were discharged on account of marriage, alleging that their discharges constituted sex discrimination in violation of Title VII of the Civil Rights Act of 1964 (42 U. S. C. § 2000e *et seq.*). In a memorandum opinion dated December 6, 1972, this Court ordered that the class action allegations of the complaint be stricken and that certain persons be allowed to intervene as Plaintiffs. In addition to the named Plaintiffs, Carole Anderson Romasanta and Brenda Bailes Altman, intervention was granted for Plaintiffs Sandra Moore Ballinger Hoiles, Sarah A. Boling, Carol Elaine Brackle, Catherine Reese Colvin, Susan Fusco, Judith Hopkins Pendleton, Terry Baker Van Horn, Mary O'Connor Whitmore, Marlene Riehl Carney, Rita Gardino Trubshaw King, Lynn Mason Raymond and Joanne Fitzgerald Hamersley. The Court denied the motions to intervene of Elizabeth Glenn Ashworth, Bernadette Dixon, Barbara A. Klocek, Gloria Lala, Patricia M. Moon, Janice Schmidt Rensch, Jeanette Byers Schlau and Evelyn A. Ambrose, on the ground that these individuals accepted reinstatement in full satisfaction of their grievances. The Court also denied the motions to intervene of Mary Weis, Helen Read Gunst, Diane M. Welty and Doris Rivas Collins on the ground that these individuals had similar actions pending elsewhere. Subsequently, on April 25, 1973, this Court granted the motion to intervene of Carol Paglia Barounes.

B. After this Court's rulings in the companion case entitled *Sprogis* v. *United Air Lines, Inc.*, Case No. 68 C 2311, holding that Defendant United Air Lines, Inc. had violated Title VII

of the Civil Rights Act of 1964 when it discharged Plaintiff Sprogis on account of her marriage (308 F. Supp. 959 (N. D. Ill. 1970), aff'd. 444 F. 2d 1194 (7th Cir. 1971), cert. den. 404 U. S. 991 (1971)) and subsequently affirming the recommendation of Special Master David Shipman as to the amount of damages which Plaintiff Sprogis was entitled to recover from Defendant United Air Lines (memorandum opinion of June 10, 1974, aff'd. 517 F. 2d 387 (7th Cir. 1975), counsel for the parties in this case negotiated settlements of the claims of Plaintiffs Susan Fusco, Mary Whitmore, Rita King, Marlene Carney, Carol Barounes, Judith Pendleton, Terry Van Horn, Brenda Bailes Altman, Carol Elaine Brackle, Sandra Hoiles, Carole Romasanta and Joanne Hamersley. In such negotiations the rulings of this Court in *Sprogis* with respect to back pay were applied. In particular, in their negotiations, counsel in good faith applied this Court's ruling in *Sprogis* with respect to the following:

a. As to any Plaintiff who had not been reinstated to her former position as Stewardess, the parties commenced their negotiations by deciding her right to reinstatement;

b. Each Plaintiff's entitlement to back pay was based upon the monthly base-pay rate for stewardesses in the relevant collective bargaining agreement, plus ten hours of overtime pay per month;

c. Computations of each Plaintiff's maximum entitlement to back pay were made by computing the back pay from the date of each Plaintiff's discharge to the date of her reinstatement, deducting all interim earnings;

d. As to any Plaintiff who was pregnant during the claim period, back pay was deducted for an eight-month period of pregnancy.

e. Appropriate consideration was given by the parties to the question of whether each Plaintiff sought interim employment with reasonable diligence; and

f. Each Plaintiff except Carole Romasanta recovered interest on the agreed back pay award, computed on a quarterly earnings basis at the rate of six per cent per annum.

C. The parties were unable to reach agreement with respect to two of the Plaintiffs and with respect to these two Plaintiffs the Court issued the following orders:

a. On July 3, 1975, this Court ordered the reinstatement of Plaintiff Sarah Ann Boling with 7½ years of seniority and without any back pay or other compensation.

b. On August 5, 1975, this Court granted Defendant United Air Lines' motion to dismiss the complaint as to Plaintiff Lynn Mason Raymond.

D. Plaintiff Catherine Reese Colvin has moved for leave to withdraw as a Plaintiff in this action, and to waive any claim to relief herein.

E. All matters affecting the claims of each of the 15 Plaintiffs relating to reinstatement and back pay have now been resolved. The only issue remaining concerns the propriety of an award of attorneys' fees and costs pursuant to Section 706(k) of the Civil Rights Act of 1964 as amended (42 U. S. C. § 2000e-5(k)).

IT IS THEREFORE ORDERED:

1. That the complaints of Plaintiffs Susan Fusco, Mary Witmore, Rita King, Marlene Carney, Carol Barounes, Judith Pendleton, Terry Van Horn, Brenda Bailes Altman, Carol Elaine Brackle, Sandra Hoiles, Carole Romasanta and Joanne Hamersley are hereby dismissed with prejudice, all matters in controversy with respect to such claims having been settled and resolved.

2. That the complaint of Plaintiff Catherine Reese Colvin is dismissed with prejudice.

3. That the Court expressly reserves jurisdiction for the purpose of considering an application for attorneys' fees and costs, which application Plaintiffs' counsel shall file within twenty days hereof.

ENTER:

/s/ J. S. PERRY

Judge

Dated: October 3, 1975

IN THE UNITED STATES DISTRICT COURT.

* * (Title Omitted in Printing) * *

PETITION TO INTERVENE FOR PURPOSES OF TAKING AN APPEAL.

Petitioner Liane Buix McDonald, by her attorney, hereby petitions, pursuant to Rules 24(a) and (b) of Federal Rules of Civil Procedure, for leave to intervene in this matter for purposes of taking an appeal from this Court's final order and judgment of October 3, 1975.

In support of this motion, petitioner states as follows:

1. This action was originally brought on a class basis on behalf of all persons employed as stewardesses by United Air Lines, Inc. who were discharged by United pursuant to its no-marriage policy between the dates of July 2, 1965 and November 7, 1968. Petitioner McDonald, as is set forth in her affidavit attached hereto and made a part of this petition, was discharged by defendant United from a position as a stewardess pursuant to this policy in September 1968.

2. By its memorandum and order of December 6, 1972, this Court struck the class action allegations and thereby excluded from this action all persons who had been discharged as stewardesses by defendant pursuant to its no-marriage policy and who had not filed a grievance under the applicable collective bargaining agreement or a complaint with the Equal Employment Opportunity Commission or similar state agency.

3. As is more fully set forth in the attached affidavit, petitioner McDonald was among the class of persons thereby excluded from this action.

4. Pursuant to certification by this Court, the named plaintiffs on December 18, 1972 sought leave from the United States Court of Appeals for the Seventh Circuit to take an interlocutory appeal from this Court's decision and order of December 6,

1972. Among the issues sought to be raised on this appeal was this Court's ruling striking the class action allegations and excluding from this action persons similarly situated to petitioner. By order of December 27, 1972, the United States Court of Appeals for the Seventh Circuit denied plaintiffs leave to take such an interlocutory appeal. Thus the denial of class status to persons excluded by this Court's December 6, 1972 order has not yet been the subject of appellate court review.

5. On October 3, 1975, this Court entered a final order and judgment in this action. Petitioner has since been informed, as is more fully set forth in the attached affidavit, that the named plaintiffs do not intend to prosecute an appeal to seek review of this Court's rulings regarding class status and exclusion.

6. Petitioner desires to prosecute an appeal to the United States Court of Appeals for the Seventh Circuit regarding this Court's rulings regarding the exclusion of petitioner and all persons similarly situated from participation in this cause.

7. Attached hereto, as required by Federal Rule of Civil Procedure 24(c), is a copy of the pleading which she will file if leave is granted: a notice of appeal to the United States Court of Appeals for the Seventh Circuit regarding these matters.

8. In support of this petition, petitioner submits her affidavit, which is attached and made a part hereof.

WHEREFORE, petitioner prays that:

A. This petition for leave to intervene be granted.

B. An appearance by counsel on petitioner's behalf and all members of the plaintiff class be entered, and

C. The notice of appeal in the form attached be filed.

/s/ THOMAS R. MEITES
Attorney for Petitioner

AFFIDAVIT OF LIANE BUIX McDONALD.

Liane Buix McDonald, on oath, deposes and states as follows:

1. I am the petitioner in the Petition to Intervene in *Romasanta, et al.* v. *United Air Lines, Inc.*, No. 70 C 1157, in support of which this affidavit is submitted.

2. On March 24, 1965, I began employment as a stewardess with United Air Lines, Inc. I served continuously in that position until September 17 or 18, 1968, when I was discharged by United under its no-marriage policy.

3. At the time of discharge or soon thereafter, I learned that other former United Air Lines stewardesses who had been discharged pursuant to the same policy were prosecuting grievances under the collective bargaining machinery or had filed charges of discrimination with state and federal agencies. Since the legality of the no-marriage policy was being challenged in proceedings that I thought would govern my situation, I did not myself file a discrimination charge against United or grievance under the collective bargaining agreement.

4. On October 8, 1975 I learned that this Court on October 3, 1975 had entered an order finally disposing of this case. I had previously been informed that during the course of this lawsuit, the Court had struck the class action allegations and so excluded me and others like me from this action and that an attempt to appeal this ruling had not been successful.

5. On October 8, 1975, I was also informed that it was unlikely that the named plaintiffs would seek to appeal to challenge the Court's rulings regarding class status and exclusion. On October 17, 1975, I was informed that in fact no such appeal would be taken.

/s/ LIANE BUIX McDONALD
Liane Buix McDonald

Subscribed and sworn to before me this 17th day of October, 1975.

/s/ THOMAS R. MEITES
Notary Public

IN THE UNITED STATES DISTRICT COUKT.

* * (Title Omitted in Printing) * *

NOTICE OF APPEAL.

Notice is hereby given that intervenor Liane Buix McDonald on behalf of herself and all other persons similarly situated hereby appeals to the United States Court of Appeals for the Seventh Circuit from the final order and judgment entered herein on October 3, 1975 and in particular, but not by way of limitation, from all orders entered herein denying or otherwise effecting maintenance of this cause as a class action and excluding appellant and all other persons similarly situated from this action.

THOMAS R. MEITES
Attorney for Intervenor

IN THE UNITED STATES DISTRICT COURT.

* * (Title Omitted in Printing) * *

TRANSCRIPT OF PROCEEDINGS.

had at the hearing of the above-entitled cause before The Honorable J. Sam Perry, Senior Judge of said Court, in his courtroom in the United States Courthouse, Chicago, Illinois on Tuesday, October 21, 1975, at the hour of 10:00 a.m.
Present:

Messrs. Cotton, Watt, Jones, King & Bowlus (One IBM Plaza, Room 4750, Chicago, Illinois 60611) by Mr. Richard F. Watt appeared for plaintiffs;

Messrs. Mayer, Brown & Platt (231 South LaSalle Street, 19th Floor, Chicago, Illinois 60604) by Mr. James W. Gladden, Jr., appeared for defendant;

Mr. Thomas R. Meites (33 North Dearborn Street, Room 2424, Chicago, Illinois) appeared for petitioner.

[2] (The Court gave attention to other matters on the call, after which the following further proceedings were had herein:)

The Clerk: No. 70 C 1157, Romasanta v. United Air Lines, petition to intervene for purposes of taking an appeal.

Mr. Meites: Good morning, your Honor.

The Court: Good morning.

Mr. Meites: My name is Thomas R. Meites, and I represent the petitioner this morning, Lee Ann McDonald.

This is a petition by Mrs. McDonald to appeal the final order and judgment your Honor entered in this case on October 3, 1975. If I may, let me give you some background on why we are here. As the attached affidavit indicates, Mrs. McDonald was a former United Air Lines stewardess who was discharged by United pursuant to its no-marriage policy. Romasanta, the case I seek to intervene in, was brought as a class action in

1970, and in 1972, as your Honor will recall, you struck the class action allegations on the motion of defendants, and in that same order you granted a certificate to plaintiffs to seek to go to the Seventh Circuit to try to get review of your class action ruling. The Seventh Circuit unfortunately chose not to [3] grant leave to take that appeal. To this day Mrs. McDonald was excluded from this action by your ruling. She was one of those stewardesses who was out of the case because of your December, 1972 ruling. Now, because the Seventh Circuit would not grant an interlocutory appeal to this day, your order has not been challenged.

With your ruling on October 3, the case is dismissed, the class action ruling is now a final order and appealable of right. However, the named plaintiffs in this case represented by Mr. Watt have informed us that they do not intend to seek an appeal. Since no one is going to appeal for Mrs. McDonald and the other stewardesses who were excluded by your December, 1972 ruling, at this time we seek to intervene so that we can take that appeal to the Seventh Circuit.

Mr. Gladden: Your Honor, James Gladden representing United Air Lines.

We oppose the motion to intervene. We think it is completely untimely. This is somewhat three years after the class action ruling was made by your Honor. In fact, under Rule 59(e) any motion to alter or amend judgment has to be served not later than ten days after the entry of the judgment. This was not served until at least two weeks after the entry of the judgment, and under the Rules it is not a timely motion because it [4] is a motion to amend the judgment because you are seeking to add a party.

Secondly, to be allowed to intervene there has to be a timely motion, and I think this motion is completely untimely. Your Honor recognizes how much effort and time has gone into trying to resolve this matter, settling with these various people who intervened. If Mrs. McDonald had a claim which she felt should

be prosecuted, when your Honor denied class action she had a full right to go into Court, bring her own action, and pursue it at that point. She chose not to do this. She sits and waits for another two and a half years, and now after this case is all wrapped up and final judgment is entered she now comes in and seeks to intervene as a plaintiff. She did not even seek to intervene as a plaintiff in this case at an earlier point, prior to the settlements which were worked out with each of these individual people. It just seems to me it is totally untimely and should be denied under both, treated as a motion to alter the judgment and treated as a petition to intervene.

Mr. Meites: Judge, can I respond just briefly to those remarks.

I think that Mr. Gladden's suggestion that we should have acted sooner is a little bit of a red [5] herring. Until we found out on Friday that Mr. Watt's clients were not going to appeal, we had every reason to expect that the class action matter which they sought to go up on once would be pursued on appeal. Now, I believe the cases hold contrary to what Mr. Gladden has suggested, that timeliness under Rule 24, petition to intervene, is determined when the right matures. Until you entered your final judgment on October 3, 1975 it was impossible for us or anyone else to appeal your class action ruling.

Let me call your attention to what I think is a case which is pretty much on point in this, a case called Pellegrino v. Nesbitt. It is a Ninth Circuit case. It says that intervention should be allowed even after final judgment when it is necessary to preserve some right that otherwise would be lost.

As I stand here today, if we are not granted this petition for leave to intervene our rights under the Romasanta case and our rights to appeal will be ended forever. The Seventh Circuit will never have a chance to test the correctness of your 1972 ruling, and Mrs. McDonald and the other stewardesses similiarly situated will forever be foreclosed from the same kind of relief that you held warranted as to the other stewardesses.

Now, you held she was in a different [6] situation than the other stewardesses.

The Court: Well, why didn't she come in here and individually seek?

Mr. Watt: You Honor, could I be heard briefly on this?

The Court: Yes.

Mr. Watt: From our standpoint, since we have settled with United Air Lines the claims of all the individual stewardesses who were permitted to intervene, we really are neutral so far as the motion is concerned, but I think as a matter of clarifying the record we should go back to the time when your Honor denied the class action status and struck the class action.

The Court: Well, I allowed everybody to come in individually that wanted to.

Mr. Watt: No, your Honor, I do not think that is quite correct. What you ruled was that you would entertain petitions for leave to intervene on behalf of those who had either filed a grievance or had gone to the EEOC or to an equivalent state agency. That excluded a number of the individuals, including the party who is now seeking to intervene.

The Court: She never even sought to appeal that order. She never sought to come in at any time and ask for a modification.

[7] Mr. Watt: No, we did seek to appeal that order, your Honor, on behalf of the class representatives who were Carole Romasanta and Brenda Altman. Your Honor certified that question under 1292(b). We took the matter to the Court of Appeals and the Court of Appeals declined to hear the class action issue at that time, so that I do not think anyone could have sought to have that issued reviewed prior to the present time. Now, we could on behalf of the class action representatives at the present time, I believe, file a notice of appeal from that original ruling with respect to the class action allegations, but our plaintiffs have chosen not to do so. They have settled their

individual claims, and consequently the original class action representatives are not in a position to take the appeal. For that reason I think there may be others who are affected by the ruling who may have standing and right to seek to appeal, and that is the purpose, as I understand it, of Mr. Meites' petition.

The Court: Well, in my judgment, gentlemen, this is five years now this has been in litigation, and this lady has not seen fit to come in here and seek any relief from this Court in any way during that period of time, and litigation must end. I must deny this motion. Of course, that is an appealable order itself, [8] and if I am in error then the Court of Appeals can reverse me and we will grant a hearing, but in my judgment this is too late to come in.

Mr. Meites: Thank you, your Honor.

Mr. Gladden: Thank you.

(Which were all of the proceedings had in the above-entitled cause on the day and date aforesaid.)

UNITED STATES DISTRICT COURT,
Northern District of Illinois
Eastern Division

Name of Presiding Judge, Honorable Joseph Sam Perry

Cause No. 70 C 1157 Date October 21, 1975

Title of Cause—Carole Romasanta et al. v. United Air Lines, Inc.

Brief Statement of Motion—Petition of Liane Buix McDonald to Intervene for Purposes of Taking an Appeal is hereby denied.

Names and Addresses of moving counsel—Thomas R. Meites, 33 N. Dearborn, Suite 920, Chicago, Ill. 60602, attorney for petitioner.

Names and Addresses of other counsel entitled to notice and names of parties they represent.—James Gladden, Jr., Mayer, Brown & Platt, 231 S. LaSalle, Chicago, Ill. 60604, attorney for defendant; Richard Watt, Cotton, Watt, Jones, King & Bowlus, One IBM Plaza, Suite 4750, Chicago, Ill. 60611, attorneys for plaintiffs.

Enter Order.

Perry

Oct. 21, 1975

IN THE UNITED STATES DISTRICT COURT.

* * (Title Omitted in Printing) * *

NOTICE OF APPEAL.

Notice is hereby given that petitioner Liane Buix McDonald on behalf of herself and all other persons similarly situated hereby appeals to the United States Court of Appeals for the Seventh Circuit from the final order entered herein on October 21, 1975 denying petitioner's Petition to Intervene.

/s/ THOMAS R. MEITES
Attorney for petitioner

IN THE UNITED STATES DISTRICT COURT.

* * (Title Omitted in Printing) * *

NOTICE OF APPEAL.

Notice is hereby given that petitioner Liane Buix McDonald on behalf of herself and all other persons similarly situated hereby appeals to the United States Court of Appeals for the Seventh Circuit from the final order and judgment entered herein on October 3, 1975 and in particular, but not by way of limitation, from all orders entered herein denying or otherwise effecting maintenance of this cause as a class action and excluding appellant and all other persons similarly situated from this action.

/s/ THOMAS R. MEITES
Attorney for petitioner

IN THE UNITED STATES COURT OF APPEALS,
for the Seventh Circuit.

No. 75-2063

CAROLE ANDERSON ROMASANTA, ET AL.,
Plaintiffs,

vs.

UNITED AIR LINES, INC., a corporation,
Defendant-Appellee,

LIANE BUIX MCDONALD, on her own behalf and on behalf of others similarly situated,
Petitioning Intervenor-Appellant.

Appeal from the United States District Court.
for the Northern District of Illinois,
Eastern Division No. 70 C 1157.
J. SAM PERRY, *Judge.*

ARGUED FEBRUARY 17, 1976—DECIDED JULY 1, 1976

Before FAIRCHILD, *Chief Judge,* CUMMINGS and PELL, *Circuit Judges.*

PER CURIAM. This case is related to *Sprogis* v. *United Air Lines, Inc.*, 444 F. 2d 1194 (7th Cir. 1971), certiorari denied, 404 U. S. 991 where we held that United's policy of refusing to employ married stewardesses was discrimination based on sex in violation of Section 703(a)(1) of Title VII of the Civil Rights Act of 1964 (42 U. S. C. § § 2000e-2(a)(1). During the pendency of the *Sprogis* appeal, Carole Romasanta[1] filed the

1. Brenda Bailes Altman was added as a plaintiff on October 9, 1970.

present suit on behalf of herself and other United stewardesses who were similarly discharged. Appellant Liane McDonald ("petitioner") was a member of the putative class in *Romasanta.*

On December 6, 1972, while defendant was still denying liability, the district court filed a memorandum opinion and order that this case should not proceed as a class action. However, the court permitted twelve former stewardesses to intervene "by way of joinder as additional parties plaintiff" since they had protested defendant's no-marriage rule by filing a grievance under the collective bargaining contract or by complaint to the Equal Employment Opportunity Commission or a comparable state agency. Petitioner and 140 other stewardesses[2] were thus excluded from the case.

On July 3, 1974, the district court granted the plaintiffs' motion for summary judgment and appointed a special master to recommend the compensation for each plaintiff. On October 3, 1975, the court issued a final order incorporating a settlement providing for reinstatement and back pay awards to the plaintiffs herein. In this order, the court only reserved jurisdiction to consider attorney's fees and costs.

Five days after the October 3, 1975, order terminating the litigation, petitioner first learned that the plaintiffs herein would probably not appeal the adverse class determination, and on October 17th she learned that there would definitely be no appeal. Consequently, on October 21st, she petitioned to intervene in order to file a notice of appeal with respect to the district court's final order of October 3, 1975, insofar as it reiterated striking the class action allegations from the complaint.[3] On

2. The figure is derived from p. 2 of petitioner's main brief and p. 13 of the EEOC's brief and may be excessive. Defendant asserts there are only 30 in this class (defendant's main brief 50).

3. On December 27, 1972, we refused to grant leave to appeal from the district court's December 6, 1972 interlocutory order striking the class allegations, so that an appeal first became appropriate after the district court's final order of October 3, 1975. The denial of the class allegations was not appealable earlier. *Anschul* v. *Sitmar Cruises, Inc.*, ... F. 2d ..... (7th Cir. No. 74-1908, decided May 17, 1976).

October 23rd, petitioner filed a notice of appeal from the October 21st order denying her petition to intervene and also filed a notice of appeal from the October 3, 1975, order insofar as the district judge had refused to permit the cause to proceed as a class action. Because the district court erred in denying the motion to intervene and in refusing to certify a class, we reverse and remand.

Whether the petitioner should have been permitted to intervene is governed by Rule 24 of the Federal Rules of Civil Procedure. In pertinent part, Rule 24(b)(2) provides:

> "(b) *Permissive intervention.* Upon timely application anyone shall be permitted to intervene in an aticon:
>
> * * * * *
>
> "(2) when an applicant's claim or defense and the main action have a question of law or fact in common. * * * In exercising its discretion the court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties."

Defendant's primary contention is that the motion to intervene was not timely. The Supreme Court has held: "Timeliness is to be determined from all the circumstances. And it is to be determined by the court in the exercise of its sound discretion; unless that discretion is abused, the court's ruling will not be disturbed on review." *NAACP* v. *New York*, 413 U. S. 345, 366. Among the relevant factors are the stage of the litigation at which the intervention is sought, the interests of the intervenors, the purposes of the statute under which the suit is brought and the relative harm to the parties. *NAACP* v. *New York, supra*, 413 U. S. at 366-369; *EEOC* v. *United Air Lines, Inc.*, 515 F. 2d 946, 949 (7th Cir. 1975). Defendant argues that the motion to intervene would have been timely only if it was made immediatcly after the court refused to certify a class. We disagree.

In our view, petitioner's application was timely within the rule because she was not advised until October 17th that the

plaintiffs would not appeal from Judge Perry's final order.[4] Plaintiffs' previous attempt to appeal from Judge Perry's interlocutory order denying class status, although unsuccessful (see note 3, *supra*), indicated that they would be willing to pursue the question after final judgment. Petitioner could reasonably rely on this representation and therefore her delay in filing the motion to intervene was excusable. See *Jimenez* v. *Weinberger*, 523 F. 2d 689, 695-697 (7th Cir. 1975); *Hodgson* v. *United Mine Workers*, 473 F. 2d 118, 130 (D. C. Cir. 1972).

Our holding is consistent with the purposes of Title VII. Because the Civil Rights Act of 1964 attacks class-based discrimination, it is particularly appropriate that suits to remedy violations of the Act be brought as class actions. See *Bowe* v. *Colgate-Palmolive Co.*, 416 F. 2d 717, 619-720 (7th Cir. 1969). The relief sought in these suits to establish equality, not only between the group discriminated against and other groups but also among the members of the victimized group. *Albemarle Paper Co.* v. *Moody*, 422 U. S. 405, 417-421; *Bowe* v. *Colgate-Palmolive Co., supra*, 416 F. 2d at 719-720; *Oatis* v. *Crown Zellerbach Corp.*, 398 F. 2d 496, 498 (5th Cir. 1968). The primary burden of enforcing Title VII rests with private plaintiffs. *Air Line Stewards & Stewardesses Ass'n.* v. *American Air Lines*, 455 F. 2d 101, 108 (7th Cir. 1972); *Jenkins* v. *United Gas Corp.*, 400 F. 2d 28, 32 (5th Cir. 1968).[5] Because of the statutory reliance on private enforcement, the courts have suspended the requirement that each victim of discrimination file a complaint with the EEOC once one member of the class has

4. *EEOC* v. *United Air Lines, Inc., supra*, is not to the contrary, for there representation of the intervenor's interest by existing parties was adequate when intervention was sought. Intervention was sought here as soon as it was apparent that plaintiffs would not appeal the final order denying class status.

5. Because the Voting Rights Act in force at the time of the suit did not authorize a private action, *NAACP* v. *New York, supra*, relied upon by defendants is distinguishable. Further, in *NAACP* there was no support for the claim that the representation of the intervenor's interests by the United States was inadequate. 413 U. S. at 368.

filed the protest. *Dodge* v. *Giant Food, Inc.*, 448 F. 2d 1333 (D. C. Cir. 1973); *Bowe* v. *Colgate-Palmolive Co., supra*, 416 F. 2d at 720; *Oatis* v. *Crown Zellerbach Corp., supra.*[6] That logic also compels the conclusion here that in court, as well as before the agency, the members may rely on the champion of the class until he or she abdicates. In this case we believe that abdication occurred when plaintiffs decided not to appeal the adverse class action determination. To hold otherwise would permit one member of the class to obtain benefits greater than other members.[7] This disparity would result, not from petitioner's lack of assertiveness, but from the district court's erroneous ruling on the class action question. This result would be inconsistent with Title VII's goal to establish equality among members of the aggrieved class.

Finally, intervention would not prejudice the adjudication of the rights of the original parties, for defendant knew of the potential liability to this class since the commencement of the class action, and until October 17th defendant could reasonably expect this liability to be enforced through an appeal of the adverse class ruling. *Jimenez* v. *Weinberger, supra*, 523 F. 2d at 701.

The other requirements of Rule 24(b)(2) have also been met. Petitioner's claim and the main action had questions of law

6. See also *American Pipe & Construction Co.* v. *Utah*, 414 U. S. 538, 551. The specific holding in *American Pipe* that the statute of limitations is tolled only during the pendency of the motion to certify a class and begins to run anew if the motion is denied is not applicable here. The statute of limitations in Title VII actions is suspended once one member of the class initiates the grievance mechanism. See *Bowe* v. *Colgate-Palmolive Co., supra*, 416 F. 2d at 720.

7. The plaintiffs and the petitioner must be considered to be members of the same class. Any distinction between them such as the filing of an EEOC or state agency complaint or a grievance with the union is not significant. Once a timely administrative complaint has been filed by one stewardess, all others who were discharged by operation of the rule are entitled to recover. Similarly, the filing of a union grievance cannot be made a precondition of recovery. *Albemarle Paper Co.* v. *Moody, supra*, 422 U. S. at 414, n. 8.

in common, namely, the correctness of the striking of the class allegations and the remedy for the illegal no-marriage rule as applied to petitioner's class. The petition to intervene was not governed by the ten-day provision of Rule 59(e) of the Federal Rules of Procedure, for petitioner's motion did not ask the district court "to alter or amend the judgment" but was for purposes of taking an appeal from the final judgment. It is entirely proper then to permit putative class members here to intervene for the purpose of pursuing an appeal of the adverse class action determination. *Black* v. *Central Motor Lines, Inc.*, 500 F. 2d 407, 408 (4th Cir. 1974); *Smuck* v. *Hobson*, 408 F. 2d 175, 177-182 (D. C. Cir. 1969) (en banc).

Because petitioner was entitled to be an intervenor and filed a timely notice of appeal from the final order terminating the litigation, we have power to examine the adverse class ruling and accordingly deny defendant's motion to strike that notice of appeal and to dismiss that appeal.

In this case, the district court judge refused to certify the class because the putative members had failed to show an interest in reemployment either by filing a grievance with the union or a complaint with the EEOC. It is well established, however, that the filing of a charge with the EEOC is not a prerequisite to recovery as a member of an injured class where one member of the class has done so. *Bowe* v. *Colgate-Palmolive Co., supra*, 416 F. 2d at 720. Nor do we believe that each member of the class can be required to exhaust other remedies before recovering. See *Albemarle Paper Co.* v. *Moody, supra*, 422 U. S. at 414, n. 8. The district court's order denying class action status must therefore be reversed.

In *Bowe* v. *Colgate-Palmolive Co., supra*, we stressed the appropriateness of a class action in a Title VII case. See also *Air Line Stewards & Stewardesses Ass'n* v. *American Airlines, Inc.*, 490 F. 2d 636, 643 (7th Cir. 1973), certiorari denied, 416 U. S. 993. On remand, the district court must comply with our ruling in *Bowe* that "relief should be made available to

all who were so damaged, whether or not they filed [EEOC or comparable state agency] charges and whether or not they joined in the suit." 416 F. 2d at 721. As stated in *Oatis* v. *Crown Zellerbach Corporation*, 398 F. 2d 496, 498 (5th Cir. 1968), "It would be wasteful, if not vain, for numerous employees, all with the same grievance, to have to process many identical complaints with the EEOC." As petitioner has explained in her affidavit supporting her petition to intervene, she knew that other former United Air Lines' stewardesses, were challenging the no-marriage policy and therefore did not file a discrimination charge against United or a grievance under the collective bargaining agreement. We conclude that the women in petitioner's class are entitled to participate in this case under *Bowe* unless they choose to opt out under Rule 23(c)(2) of the Federal Rules of Civil Procedure.[8]

The district court's orders of October 3 and 21, 1973, are reversed with instructions to permit petitioner to intervene on her own behalf and on behalf of her class, to treat the case as an action by her class, and to fashion relief for her class.

PELL, *Circuit Judge*, dissenting. The Romasanta suit out of which the present issue arose required five years for a resolution to be reached. When that suit reached a critical point insofar as petitioner's interests were concerned more than three years ago, it in my opinion was incumbent upon her then to take immediate affirmative steps to protect her interests if she wanted to take advantage of this lawsuit as a forum for her claims.

In my opinion Judge Perry clearly acted properly when he denied the motion to intervene as untimely:

> THE COURT: Well, in my judgment, gentlemen, this, is five years now this has been in litigation, and this lady has not seen fit to come in here and seek relief from this Court in any way during that period of time, and litigation must end. I must deny this motion. Of course, this is an appealable order itself, and if I am in error then the Court of Appeals can reverse me and we will grant a hearing, but in my judgment this is too late to come in.

8. This opinion does not preclude the defendant from mitigating liability or rebutting the damage claim of some members of petitioner's class. *Sprogis* v. *United Air Lines, Inc.*, 517 F. 2d 387, 392 (7th Cir. 1975).

Since I agree with Judge Perry and disagree with the majority finding that Judge Perry abused his discretion, I respectfully dissent.

Questions of timeliness are peculiarly appropriate for determination by the trial court, and it is for that reason that the appropriate standard for review is to determine whether there has been an abuse of discretion. The United States Supreme Court, in *NAACP* v. *New York*, 413 U. S. 345 (1973), in affirming the lower court's denial of a motion to intervene on the basis of timeliness, set forth the standard by which this Court must review Judge Perry's ruling as follows (413 U. S. at 365-66):

> Intervention in a federal court suit is governed by Fed. Rule Civ. Proc. 24. Whether intervention be claimed of right or as permissive, it is at once apparent, from the initial words of both Rule 24(a) and Rule 24(b) that the application must be "timely." If it is untimely, intervention must be denied. Thus the court where the action is pending must first be satisfied as to timeliness. Although the point to which the suit has progressed is one factor in the determination of timeliness, it is not solely dispositive. Timeliness is to be determined from all the circumstances. And it is to be determined by the court in the exercise of its sound discretion: unless that discretion is abused, the court's ruling will not be disturbed on review. (Footnotes omitted.)

This same standard has consistently been applied in cases involving Title VII of the Civil Rights Act *E.g.*, *EEOC* v. *United Air Lines, Inc.*, 515 F. 2d 946 (7th Cir. 1975); *Black* v. *Central Motor Lines, Inc.*, 500 F. 2d 407 (4th Cir. 1974).

In *NAACP*, the Supreme Court upheld the district court's determination that the motion to intervene was untimely, even though it was filed only seventeen days after the would-be

intervenors allegedly became aware of the suit, stating that "it was incumbent upon the appellants, at that stage of the proceedings, [a critical stage] to take immediate affirmative steps to protect their interests. . . ." 413 U. S. at 367.

In *EEOC*, *supra*, this court denied a motion to intervene as untimely in a situation much less extreme than the instant case. A pattern and practice suit was brought in April 1973, under Title VII of the Civil Rights Act, alleging discrimination against black and female employees of United Air Lines. The complaint was amended in February 1974 to include allegations of discrimination against Spanish-surnamed and Asian-American employees. When two organizations representing these latter groups attempted to intervene in July 1975, this Court affirmed the denial of intervention as untimely, even though the trial had not yet begun, because the intervenors had offered no excuse for waiting *5 months* after the complaint was amended and their interest in the action first created. See also *SEC* v. *Bloomberg*, 299 F. 2d 315 (1st Cir. 1962); *Hoots* v. *Pennsylvania*, 495 F. 2d 1095, 1097 (3d Cir. 1974), *cert. denied*, 419 U. S. 884; and *Westward Coach Manufacturing Company, Inc.* v. *Ford Motor Co.*, 388 F. 2d 627, 635 (7th Cir. 1968) *cert. denied*, 392 U. S. 927.

In a class action situation, the determination of when intervention is first appropriate relates to the question of adequacy of representation. In a true class action, it is unnecessary for an unnamed class member to intervene as long as his interests are being protected by his class representatives. In *Alleghany Corporation* v. *Kirby*, 344 F. 2d 571 (2d Cir. 1965); *cert. granted*, 381 U. S. 933, *cert. dismissed as improvidently granted*, 384 U. S. 28 (1966), where the Second Circuit denied a "last-minute" attempt at intervention by shareholders in a derivative suit to set aside a settlement on behalf of their corporation, the court explained the connection between timeliness and adequate representation (344 F. 2d at 574):

> As we see it, the timeliness requirement, specifically articulated in Rule 24(a), is related to the question whether the shareholders' interests are or may be inadequately represented, for whether an application to intervene is prompt or tardy also turns on when the interests of the proposed intervenors were no longer properly represented.

When petitioner's application for intervention is viewed in the light of these cases, it appears clear to me that the motion was untimely. Petitioner admits knowledge of the class action denial in Romasanta in 1972 and yet offers no persuasive reason for her failure to petition to intervene then. Once the class was denied, and the suit proceeded as an individual action, she had no reason to believe her interests were being represented or protected by others. This was particularly true since the class action denial had the effect of excluding from the case all those who, like petitioner, had not protested the no-marriage rule. There was no longer anyone similarly situated to petitioner in the case.

Petitioner admits knowledge of the course of the *Sprogis* (or related) litigation from the very start (*i.e.*, September 1968, the time of her alleged discharge). Yet she made no attempt to intervene in *Sprogis* to appeal from the denial of class action in 1972 or from the final order in 1974.[1]

But instead, petitioner, with claimed knowledge of the pending lawsuits concerning the no-marriage rule, did nothing and wanted seven years to identify herself as one who sought relief. Petitioner now wants to start this case all over again—three years after Romasanta was declared not to be a class action, after many others were permitted to intervene, and after extensive negotiations in which the parties were finally able to resolve the issues in this case.

Consistent with petitioner's unhurried conduct is the fact that her motion to intervene violates the only procedural rule under

1. Petitioner argues that she relied upon the parties in Romasanta to appeal the class action decision. But ALPA, the party responsible for bringing both the *Sprogis* and Romasanta actions, did not appeal the class denial in *Sprogis* (nor did anyone else), so there appears to be no reason for petitioner's reliance on the same parties' appealing the class decision in Romasanta.

which her motion can be brought, *i.e.*, Fed. R. Civ. P. 59(e), Rule 59(e) provides that "[a] motion to alter or amend the judgment shall be served not later than 10 days after entry of the judgment." Petitioner's motion to intervene was clearly a motion to alter or amend the judgment to add an additional party. It was served on October 17 and heard on October 21, 1975, all well beyond ten days after the entry of the final order on October 3.

It is important to note that had she sought intervention immediately after the denial of class status, and her intervention had been denied, the intervention issue would have been before this court three years ago. Furthermore, assuming that her intervention had been denied because of petitioner's failure to protest the no-marriage rule—the requirement which was the basis of the court's holding that this action lacked the requisite numerosity to proceed as a class action—then *that* issue would have been before this court and decided three years ago. Instead, petitioner chose to sit back and allow others to assume the costs and risks in prosecuting their individual actions, and now she attempts to revive her dead claim through another suit which after years of legal argument and negotiation was finally settled to the satisfaction of all parties.

When a class action is denied, former putative class members may not ignore this fact and continue on the assumption the suit is a class action ("spurious" or otherwise), as does petitioner. The denial of class status is a critical point which puts putative class members on notice that they must act to protect their rights. The tolling procedure established by the Supreme Court in *American Pipe & Construction Co.* v. *Utah*, 414 U. S. 538 (1974), would have no meaning without its corollary requirement that as soon as the class is decertified, former class members who want relief must "make timely motions to intervene" (414 U. S. at 553).

Finally, it should be noted that the timeliness requirements of Rule 24 have been interpreted more strictly by the courts

after judgment, where absent very unusual circumstances intervention is not permitted. *United States* v. *Blue Chip Stamp Co.*, 272 F. Supp. 432, 436 (C. D. Calif. 1967), *affirmed per curiam sub nom. Thrifty Shoppers Scrip Co.* v. *United States*, 389 U. S. 580 (1968):

> The requirement of timeliness is not without foundation. The interest in expeditious administration of justice does not permit litigation interminably protracted through continuous reopening. A motion to intervene after entry of the decree should therefore be denied in other than the most unusual circumstances.

Accord, Chase Manhattan Bank v. *Corporation Hotelera de Puerto Rico*, 516 F. 2d 1047, 1050 (1st Cir. 1975) (per curiam); *Pennsylvania* v. *Rizzo*, 66 F. R. D. 598, 600 (E. D. Pa. 1975); 3B *Moore's Federal Practice* § 24.13[1] (1975 ed.); 7A Wright & Miller, *Federal Practice and Procedure*, § 1916 at 579-80 (1972).

Since, in my opinion, the timeliness issue is dispositive of this case, I have not deemed it necessary to advert to the other issues raised on this appeal.

UNITED STATES COURT OF APPEALS
For the Seventh Circuit
Chicago, Illinois 60604

September 1, 1976.

Before

HON. THOMAS E. FAIRCHILD, *Chief Judge*
HON. WALTER J. CUMMINGS, *Circuit Judge*
HON. WILBUR F. PELL, JR., *Circuit Judge*

No. 75-2063

CAROLE ANDERSON ROMASANTA, et al.,
Plaintiffs,
vs.
UNITED AIRLINES, INC., a corporation,
Defendant-Appellee.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.
No. 70 C 1157
J. Sam Perry, Judge.

ORDER

On consideration of the petition of the Appellee United Airlines, Inc. for a rehearing by the Court, and, a majority of the judges in regular active service not having voted for a rehearing en banc and a majority of the panel having voted to deny a rehearing.

IT IS ORDERED that the petition of the Appellee for a rehearing be denied.

Judges Pell, Tone, Bauer and Wood voted to grant a rehearing en banc.